E. I. DuPont de Nemours *and* Teamsters Local 515, an affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. Cases 10-CA-14698 and 10-CA-14776

August 6, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

On September 25, 1981, Administrative Law Judge James M. Fitzpatrick issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge, as modified herein, and to adopt his recommended Order, as modified herein.

The General Counsel excepts to the Administrative Law Judge's finding that Gary Jones' discharge did not violate Section 8(a)(3). We find merit in that exception. As detailed in the Administrative Law Judge's Decision, Jones was very active on behalf of the Union, management was well aware of his prounion attitude, and management had a deep-seated animus against the Union and its supporters. From the time Bryan Lane became Jones' immediate supervisor in late February 1979, Lane set out to intimidate and harass Jones. By mid-June, Lane's harassment included: often requiring Jones to perform significantly more work than other employees; often requiring Jones to take shorter or fewer breaks than other employees; reprimanding Jones for alleged safety violations even though he was not guilty of unsafe conduct; reprimanding Jones for a problem that was due to improper conduct occurring during the prior shift; and often standing near Jones and staring at him while Jones performed his work. The Administrative Law Judge found, correctly, that these activities constituted relentless, grinding harassment by management in violation of Section 8(a)(3) of the Act.

By June 17, Jones had been subjected to Lane's harassment for several months. On that day, Jones was working on a machine in a noisy area of the plant, where earplugs are worn, and employees have to talk louder than normal in order to be heard. Jones hollered to a fellow employee. Lane had told Jones in May not to scream while working. Lane heard the holler and immediately came up to Jones. Standing face to face, inches apart, Lane told Jones, "I thought I told you to quit hollering." Jones replied he would scream "any goddam time or place" he wanted. Jones then pushed Lane away by placing his hand on Lane's chest. There was no other physical contact between the two men. Jones then said Lane had lied about him and to him, had told "every goddamn lie" that could be thought of, and if Lane were not an old man, he would "stomp his goddamn ass in the floor." Jones asked Lane if he wanted to fight. Lane said nothing, moved away slowly, and then left. Lane reported the incident to the shift supervisor. Jones was suspended immediately and was discharged the following day. Though the Administrative Law Judge found that the record established a *prima facie* case of an unlawful termination, he concluded that Jones' pushing of and words to Lane on June 17 justified Respondent's discharge of Jones. We disagree.

An employee is not justified in resorting to violent self-help to settle differences with a supervisor. *Spotlight Company, Inc.*, 192 NLRB 491 (1971). We do not condone physical assaults by an employee on a supervisor. When an employee strikes his supervisor, or fights with his supervisor, or even slaps his supervisor, we consistently find that employee's conduct to be unprotected activity, and an employer's discharge of that employee for such conduct is normally upheld. *J. P. Stevens & Co., Inc.*, 181 NLRB 666 (1970); *Magnesium Casting Company, Inc.*, 250 NLRB 692 (1980). But the situation here is far different from such cases. First, the employee here did not strike, fight with, or slap his supervisor. Instead, Jones moved his supervisor away from his face by pushing him in the chest with his left hand, palm open. Jones is right handed. Lane was pushed back a step or two; he

[1] Respondent and the General Counsel have excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] In his discussion of the no-solicitation rule, the Administrative Law Judge relied on the standard set out in *Essex International, Inc.*, 211 NLRB 749 (1974). He found that Respondent promulgated a no-solicitation rule which violated Sec. 8(a)(1). In adopting that conclusion, we note that a new standard was announced in *T.R.W. Bearings Division, A Division of T.R.W., Inc.*, 257 NLRB 442 (1981). We find that Respondent adopted a no-solicitation rule which violated Sec. 8(a)(1) under either *Essex International* or *T.R.W.*

Chairman Van de Water does not subscribe to or adopt the decision in *T.R.W., supra.*

did not fall. The Administrative Law Judge's reliance on *Great Western Coca-Cola Bottling Company d/b/a Houston Coca Cola Bottling Company*, 256 NLRB 520 (1981), wherein the employee either slapped or hit his supervisor on the side of the head, is thus misplaced. Second, Jones' moderate, almost reflexive action was the culmination of a 3-1/2-month campaign of intimidation and harassment. Supervisor Lane forced Jones to work harder, take fewer breaks, and endure numerous trumped-up reprimands. Lane's relentless harassment drove Jones to a point of no return; when Jones finally crossed that point by pushing Lane, Respondent seized upon Jones' action as a justification for discharge. The statute does not permit Respondent to so act. It is well settled that "[a]n employer cannot provoke an employee to the point where [the employee] commits . . . an indiscretion . . . and then rely on this to terminate [the] employment." *N.L.R.B.* v. *M & B Headware Co., Inc.*, 349 F.2d 170, 174 (4th Cir. 1965). Where the employer has provoked the employee, the onus for discharge should not be automatically transferred to the employee. To allow the employer to use the logical and intended result of its intensive harassment campaign to justify its discharge of the subject of that illegal harassment would be to reward the employer for its own wrongdoing. Bearing in mind that here Jones neither struck nor slapped his supervisor, we find that Jones' conduct was not so unreasonable in relation to Respondent's provocative harassment as to justify his discharge. *Louisiana Council No. 17, AFSCME, AFL-CIO*, 250 NLRB 880 (1980); *McAllen Coca-Cola Bottling Co., Inc.*, 258 NLRB 789 (1981). We therefore find that by discharging Jones Respondent violated Section 8(a)(3) of the Act.[3]

AMENDED CONCLUSIONS OF LAW

The Administrative Law Judge's Conclusions of Law are amended as follows:

1. Insert the following as Conclusion of Law 6 and renumber the subsequent paragraphs accordingly:

"6. Respondent engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act by suspending Gary Jones on June 17, and discharging him on June 18, 1979, and thereafter failing to reinstate him."

[3] Our analysis here is similar to that traditionally used by the Board in determining whether employees, who are participating in an unfair labor practice strike and engage in strike misconduct, are entitled to reinstatement. In those cases, the Board balances the nature of the employees' conduct against the employer's unfair labor practices. *H. N. Thayer Co.*, 115 NLRB 1591, 1593, 1596 (1956); *Juniata Packing Company*, 182 NLRB 934, 935 (1970).

AMENDED REMEDY

Having found that Respondent has engaged in unfair labor practices by unlawfully discharging Gary Jones in addition to the violations found by the Administrative Law Judge, we shall order Respondent to cease and desist therefrom and to offer Jones immedate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position without prejudice to his seniority or other rights and privileges previously enjoyed. Moreover, we shall order that Respondent make him whole for any loss of earnings he may have suffered as a result of the discrimination against him by paying him a sum equal to what he would have earned, less net earnings, to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950). Interest on the backpay shall be computed as set forth in *Florida Steel Corporation*, 251 NLRB 651 (1977). (See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).)

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, E. I. DuPont de Nemours, Chattanooga, Tennessee, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following as paragraphs 2(b) and (c) and reletter the subsequent paragraphs accordingly:

"(b) Offer Gary Jones immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any losses he may have suffered because of the discrimination practiced against him, in accordance with the provisions set forth in the section of the Board's Decision and Order entitled 'Amended Remedy.'

"(c) Expunge from the personnel file of James Merriman any reference to his discharge of May 17, 1979. Expunge from the personnel file of Gary Jones any reference to his discharge of June 18, 1979."

2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT promulgate, maintain, or enforce rules which interfere with employee union solicitation in nonwork areas of the plant or during nonworking time.

WE WILL NOT refuse off-duty employees access to the plant cafeteria, contrary to past practice, in order to interfere with employee union activities.

WE WILL NOT coercively question our employees concerning their union views and activities.

WE WILL NOT ask employees not to wear union insignia unless we have a valid business reason.

WE WILL NOT promise benefits to employees to induce them to vote against a union.

WE WILL NOT, directly or by implication, threaten employees that it will be futile for them to have a union represent them.

WE WILL NOT threaten reprisals to employees for engaging in union activities.

WE WILL NOT threaten employees with loss of promotions if they engage in union activities.

WE WILL NOT threaten employees with loss of jobs in the future if they have a union represent them.

WE WILL NOT deny employees the right to a representative of their choosing at interviews to investigate matters involving discipline or discharge.

WE WILL NOT harass, discipline, suspend, discharge or otherwise discriminate against employees for engaging in union activities or for having charges filed with the Board or for giving testimony under the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to join or assist Teamsters Local 515, an affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, or any other labor organization, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

WE WILL offer James Merriman and Gary Jones immediate and full reinstatement to their former postions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and WE WILL make them whole for any loss of earnings or benefits suffered by reason of the discrimination against them, with interest, and WE WILL expunge any reference to their discharges from their personnel files.

E. I. DUPONT DE NEMOURS

DECISION

STATEMENT OF THE CASE

JAMES M. FITZPATRICK, Administrative Law Judge: In this case DuPont supervisors repeatedly interfered with employee rights both before and after a Board election which the Union lost. Three weeks after the election DuPont fired two prounion activists and a month later fired a third. This third activist had gotten the Union to file charges against DuPont with the Board and had given an affidavit in support of those charges. Also prior to his discharge he was the target of a series of harassments by his immediate supervisor. I find hereinafter that the interferences were unfair labor practices, that the discharge of the first prounion activist was for valid cause, the discharge of the second was unlawful discrimination, and, although the third was discharged for valid cause, the harassment which preceded it was unlawful.

This proceeding commenced initially with unfair labor practice charges filed on May 21, 1979,[1] by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America against E. I. DuPont de Nemours (Respondent, Company, or DuPont) in Case 10-CA-14698. On July 12 these charges were amended to reidentify the Charging Party as Teamsters Local 515, an affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the Union). In the meantime on June 22 the Union had filed additional charges against the Company in Case 10-CA-14776 which were also amended on July 12. On July 25, based on the charges filed in Cases 10-CA-14698 and 10-CA-14776, a complaint issued alleging company unfair labor practices in violation of Section 8(a)(1), (3), and (4) of the National Labor Relations Act, as amended (the Act). On July 12 the Union also filed other charges against the Company in Case 10-CA-14825 which were amended on August 6. On August 10 a second consolidated complaint issued based on the charges in all three cases. On January 21, 1980, an amendment to the original consolidated complaint issued alleging additional unfair labor practices. When the matter came to hearing the al-

[1] All dates herein are in 1979 unless otherwise indicated.

legations in the second complaint based on the charges in Case 10-CA-14825 were severed out, leaving for litigation only the matters identified with Cases 10-CA-14698 and 10-CA-14776.

The Company answered each complaint, admitting jurisdictional allegations, but denying that it engaged in unfair labor practices. The issues remaining for determination are largely factual and fall into two broad categories; namely, independent violations of Section 8(a)(3) and (4) of the Act. The 8(a)(1) issues involve company rules restricting employee union activities, restrictions on employee solicitation for the Union, promises of certain benefits if employees would refrain from giving the Union support, numerous interrogations respecting employee union activities, several statements underscoring the futility of having union representation, several threats of reprisals should employees engage in union activities, and refusal to allow an employee to have a representative with him during an investigative disciplinary hearing. The second broad category of issues involves discrimination against three employees, namely, the discharge of two because of their union activities, and the discharge of the third because of his union activities and because he filed charges and gave testimony in a Board investigation. These issues were heard before me in Chattanooga, Tennessee, on February 5 through 8 and 12 through 15, 1980.

Based on the entire record, including my observation of the witnesses, and consideration of the briefs of the General Counsel and Respondent, I make the following:

FINDINGS OF FACT

I. THE RESPONDENT

Respondent, a Delaware corporation, operates many plants in various States, including a plant in Chattanooga, Tennessee, in which it manufactures nylon fibers. It annually sells and ships from this plant directly to points outside Tennessee finished products valued over $50,000. Respondent is engaged in commerce. The plant operates in three shifts and employs close to 3,000 persons.

II. THE UNION

The Union, a labor organization as contemplated in the Act, conducted an organizing campaign at Respondent's Chattanooga plant during the early months of 1979. The campaign culminated in a Board-conducted election on April 25 and 26 in a production and maintenance unit of approximately 2,828 eligible voters. The Union lost the election. No objections respecting the election were filed and the Board certified the results.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Threats, Coercion, and Restraint*

The complaint alleges that a variety of independent violations of Section 8(a)(1) of the Act were committed by Respondent during the campaign preceding the Board election and thereafter. The evidence and findings respecting these are arranged herein *seriatim.*

1. The no-solicitation rule

The complaint alleges that Respondent violated Section 8(a)(1) of the Act on February 21 when Supervisors Bryan Lane and Spencer Senters orally promulgated, maintained, and enforced an overly broad, and therefore unlawful, rule prohibiting employees from soliciting fellow employees on behalf of the Union during nonworking time.

Ronald Watkins, a prounion activist who at the time of the preelection campaign worked in the T-33 area on special assignment checking hotplates, relieving the patroller, and on other assignments that supervision gave him, worked under the immediate supervision of Lane. Senters was shift supervisor. Watkins credibly testified that in late February he had in his possession a supply of union authorization cards for the purpose of signing up fellow employees. One day as he walked through his area to the cordura room, fellow employee Michael Byrd called him over to a blue zone (or smoking area) and asked for a blank card so he could sign up for the Union. Watkins, who was not interrupting his own work, supplied him with a card. Byrd filled it out and returned it to Watkins. At that point Lane came up and inquired what they were doing. Watkins admitted he was signing Byrd up for the Union. Lane then stated, according to Watkins whom I credit, "Well, it is against company policy signing a man up for the Union on plant property." Watkins disputed the validity of such a rule, pointing out that they were in a designated blue zone. He told Lane he did not know what he was talking about.

Thereafter Lane told him to come to the office. At Watkins' suggestion, Lane brought Senters into their meeting. Together they examined the written plant rules. After examining them Senters announced, "Well, you can sign a man up in the cafeteria, in the coke zone and outside the plant." After some further discussion they sent Watkins back to work. As he was leaving, Lane said to him, "You know this will be documented in your file."

Lane testified that it was later in the shift that he took Watkins to the shift supervisor's office where they met with Senters. He admitted that during this meeting he told Watkins he could not get employees to sign union cards on official company time except before and after shift break, in the cafeteria during lunch period, in halls and passageways, in restrooms, or in official break areas such as the coke and coffee zone and the rap shack.[2] He also admitted he told Watkins he would document the incident and it would become part of Watkins' record.

Byrd did not testify. Although Senters did, he was not asked about this incident. Lane's testimony did not contradict that of Watkins, with the following exceptions. Lane testified that Watkins left his work station to talk with Byrd. However, I credit Watkins' explanation that in fact he did not leave any work that he was doing at the time to talk with Byrd. He explained he had completed one task and was moving to another location to take up another task which did not require his immediate

[2] A rap shack is a small soundproof room where employees take breaks.

attention when Byrd signaled to him. The second seeming inconsistency is that some of Lane's testimony leaves the impression that the conversation between Byrd and Watkins did not occur in a break area. However, careful examination of his entire testimony reveals that Byrd was in a blue zone when he motioned to Watkins and that this zone, which is used for breaks, is adjacent to a supervisor's desk not being used at that moment. Watkins went to Byrd in the blue zone and then, according to Lane, Byrd used the supervisor's desk while filling out the union authorization card. In these circumstances for Lane to leave the impression that Watkins was soliciting signatures outside of a break area is disingenuous. The third discrepancy between the two witnesses results from Lane's account that, at the conclusion of the meeting between Lane and Senters and Watkins, Watkins apologetically agreed he had not complied with the written plant rule on solicitation. I do not credit Lane on this because, as pointed out in the General Counsel's brief, an apologetic retreat is not consistent with the sequence of events nor with Watkins' personality which, as was apparent from his demeanor during his testimony, is not that of an apologetic person.

The testimony of Watkins and Lane also varied in that Watkins reported statements by Lane at the site where Watkins was obtaining the signature of Byrd and that Lane asserted Watkins could not so solicit on plant property. Lane's testimony seems to place all statements in the supervisor's office when he, Watkins, and Senters met later in the shift. Respecting this variance I credit Watkins because it seems unlikely that Lane would have intervened without stating the basis for his intervention.

Considering the foregoing, I find that, on February 21, Lane announced to Watkins and Byrd a no-solicitation rule applicable to all plant property, a rule so broad as to include all locations whether working or nonworking and all times during a shift whether working time or not. Requiring Watkins to report to the office in these circumstances was an enforcement of that rule. Lane's verbal rule, being overly broad, violated Section 8(a)(1) of the Act. *Essex International, Inc.*, 211 NLRB 749, 750 (1974). I further find that during the meeting between Lane, Senters, and Watkins at which Lane admittedly told Watkins he could not solicit employees to sign union cards on official company time, except before and after shift break, in the cafeteria during lunch period, in halls and passageways, and in restrooms or official break areas such as a coke zone and the rap shack, he pronounced an ambiguous rule which could lead employees to think they could not solicit even if they were on their own or nonworking time except in the particular places mentioned by Lane. It was further ambiguous in that use of the words "on official company time" could lead employees to think that solicitation was prohibited any time during their shift even if it were not working time for them as such. The burden of such ambiguity falls on the employer which promulgates the ambiguous rule. And Senters inferentially limited Watkins' right to solicit to the locales of the cafeteria, coke zone, and outside the plant. I find that the rule as variously pronounced by Lane and Senters during the meeting violated Section 8(a)(1) of the Act. *Essex International, Inc., supra.*

2. Lane's interrogation and threat to Billingsley

The complaint alleges that, on or about March 3, Lane unlawfully interrogated employees concerning their union membership, activities, and desires and the union membership, activities, and desires of other employees. The complaint also alleges that on March 3 Lane threatened employees with reprisals if they joined in activities on behalf of the Union by threatening not to consider them for promotion because of their union membership, activities, and desires.

According to David Billingsley, a Black DBO operator in the cordura, T-13 area, at the time of the preelection campaign he became a union supporter, wearing various prounion insignia such as union buttons and the so-called dillies, an artificial daisy associated with the Union. On March 5 he wore two Teamsters pins and two dillies, one in front and one in back. Lane was then a relief supervisor for the area and shift on which Billingsley worked.[3] Lane was personally acquainted with Billingsley, having previously been his immediate shift supervisor. While Billingsley was working, Lane came up to him and asked if he had a minute. Billingsley said he did and they went together to a nearby coke machine. As they commenced talking, another employee, Jerry Conners, came up, and Lane and Billingsley moved away for privacy. Lane began by telling Billingsley that he knew that Billingsley's first priority was to go into business for himself. This was a matter which a year or so earlier they had discussed. Lane continued, saying that anything he could do to help Billingsley, he would. He went on to say that the main thing he wanted to talk about was the Union and asked Billingsley why he was getting so involved in the Union. Billingsley replied that it was something he had felt for a long time and something that he wanted. Lane then asked whether anyone was pressuring him into campaigning for the Union. Billingsley replied no, that it was his own thinking. Lane referred to the fact that in the past Billingsley had assisted him by participating in safety meetings and that the Company had recognized him for that contribution.[4] He said the Company was making more and more Black supervisors and the potential was there for Billingsley if he wanted it. He then added, "The Company wouldn't recognize you if you didn't pull that shit off." I find that Lane was referring to the union insignia on Billingsley's clothing. Lane continued that he would not be saying these things if Billingsley were going to tell the people at the union hall and that, if he (Lane) were confronted with his remarks, he would deny them.

I base the above findings on the credited testimony of Billingsley, a forthright witness with good recall of the details of the occasion about which he testified. Lane's testimony conflicts with Billingsley's. He, in effect, denied making each of the statements on March 5 which Billingsley attributed to him, and further denied that such a conversation occurred. Although Lane's demeanor on the stand appeared forthright, his testimony did

[3] A relief supervisor fills in for the regular supervisor on the 1 day per month that the regular supervisor has off.

[4] Billingsley, a volunteer fireman, had shown films on automobile safety, use of fire extinguishers, and other safety matters.

not remain consistent. At one point he denied having any conversations with Billingsley in 1979 although he was his relief supervisor on several occasions. Later in his testimony he indicated that he may have conversed with Billingsley while he was his relief supervisor in early 1979, but only about Billingsley's job. He generalized that his only conversations with any employees while he was a relief supervisor during the period of the union campaign were exclusively job related. Subsequently, however, he admitted that as a supervisor he campaigned on behalf of the Company during the preelection period and regularly engaged employees in discussions about campaign issues. In the circumstances I find the testimony of Billingsley more reliable.

I find that, in the March 5 conversation with Billingsley, Lane violated Section 8(a)(1) of the Act in various ways. By asking Billingsley why he was getting so involved with the Union, Lane unlawfully interrogated him. In the context of the workplace, such an inquiry put by a supervisor to a rank-and-file employee coercively interfered with the freedom to engage in or not to engage in conduct protected by Section 7. I also find that in asking Billingsley whether anyone was pressuring him into campaigning for the Union, Lane similarly violated Section 8(a)(1). *Blue Cross-Blue Shield of Alabama*, 225 NLRB 1217, 1222–23 (1976). This is not a case where there is any showing of prounion coercion. There is nothing about the context of the situation which would have indicated to Billingsley that Lane meant coercive pressure. His words were broad enough to include solicitation and other types of noncoercive persuasion designed to sell Billingsley on supporting the Union. Since Lane's inquiry, as put, was broad enough to include such legitimate interchange between employees, I find it was an unlawful interference. I further find that his conversation as a whole indicated to Billingsley that he should not wear prounion insignia and that to continue to do so would result in his not being considered for a supervisory position. This was a threat of reprisal for engaging in legitimate union activities and a violation of Section 8(a)(1).

3. Coffman's interrogations of Boston

During the preelection campaign Michael Boston worked in the T–33 spinning area as a creel warp operator under Supervisor Marvin Coffman. Boston was an active union supporter in that he frequently wore T-shirts bearing the union insignia as well as union buttons and the dilly.

He testified that about the second week in March Coffman initiated a conversation with him at his workplace. According to Boston, Coffman asked why he wanted the Union, commenting that he (Coffman) had worked for unions before and "they wasn't worth a shit." Boston explained that the reason he wanted the Union was because employees at the plant did not have anything but the industrial relations office, which worked for the Company, and the plant manager had the last word on anything.

Boston further testified, and I find, that a couple of days later Coffman again had a conversation with him on his job. Coffman asked him whether he had ever worked under a union before. Boston replied he had at Atlas Chemical Company. Coffman then commented, "You mean to tell me you left the Teamsters to come to work for DuPont?"[5] Boston responded that no, he had left Atlas to come to DuPont to make more money.

Coffman in effect denied having the first conversation with Boston. He testified he did not recall asking the question or making the statement respecting his own past experience with unions and further testified flatly that he never made any comment to Boston respecting his past experience with unions. He admitted that on another occasion and in another context he had told another employee about his past unfortunate experience with a union when he was a rank-and-file employee with another company. Coffman in effect also testified that he did not ask Boston whether he had worked under a union before. Although this was not a categorical denial, he testified he did not recall asking Boston that question. He did, however, recall that on one occasion Boston stated he had worked at T & T (the same plant as Atlas Chemical Company) and that he had made more money there than he did when he came to DuPont. According to Coffman he commented that it was hard to believe a person would leave one place to go and work at another for less money, and that Boston simply replied, "Well, I did."

Insofar as the testimony of Boston and Coffman conflict, I credit Coffman as the more credible witness. He was responsive to the questions put to him and held up well on cross-examination, refusing to allow counsel to put words in his mouth. He gave the impression of having a good recall of what had and had not transpired. Boston, although not a poor witness, was vague in setting the time of the events about which he testified. By comparison Coffman was the more credible witness.

I find in the first conversation on or about March 9 Coffman violated Section 8(a)(1) of the Act by asking Boston why he wanted a union. Such an inquiry by a supervisor to an employee in the workplace necessarily coerces the employee to reveal and to justify his thoughts about union representation. *Blue Cross-Blue Shield of Alabama, supra*. Assuming that the second conversation to which Boston testified was the same one which Coffman recalled, I find no evidence that anything stated by Coffman in that second conversation constituted a violation of Section 8(a)(1) of the Act.

4. Kyle's promises of benefits to Campbell

About a month before the election James Campbell, a spinning operator in the T–33 area, went to the denier room for a brief break. He found fellow employee Joe Beagles conversing with Shift Supervisor Grady Kyle. Campbell heard Kyle tell Beagles that he (Kyle) could not make any promises, but, if the Union did not come in, to look for a good cost-of-living raise, and also that he thought the Company knew that it was not doing the employees right on the insurance and he thought it would do something about that too.

[5] Other evidence in the record indicates that the employees at Atlas Chemical Company were represented by the Teamsters.

I base these findings on the credited testimony of Campbell who was not a union supporter. Beagles did not testify. Kyle testified he did not recall such a conversation and then generally denied ever telling any employee that if the Union did not come in the Company would give a cost-of-living raise or make any change. Within the general time frame of the conversation reported by Campbell, Kyle did recall talking with Beagles and some other employees, but not including Campbell, about medical insurance for employees. Kyle recalled that he answered a question put to him by Beagles about whether the medical expense deductible would be changed back from $300 to $100. Kyle testified that he answered that he had not been told anything about any change at that time. I credit Campbell over Kyle because Campbell had a specific recollection of a specific conversation which Kyle testified he did not recall. Although Kyle testified about a conversation with Beagles at or about the same time, he placed it at a slightly different location, and did not place Campbell at the conversation. It is not at all clear, therefore, that he was recalling the same conversation about which Campbell testified. Finally, Campbell was the more precise and in demeanor more forthright witness, while Kyle was more verbose and less precise in his testimony.

Based on the foregoing, I find that about a month before the election Kyle told Beagles in substance that if the Union lost the election the employees could look for a cost-of-living raise and possibly an advantageous adjustment in insurance benefits. In the context in which they were made, Kyle's remarks were conditional promises of a raise and improved insurance if the Union lost the election and, therefore, constituted inducements to his employee listeners to vote against the Union in the Board election. Such inducements were unlawful interference with employee Section 7 rights and violated Section 8(a)(1) of the Act.

5. Threats of the futility of union representation—Senters' threats to Hale

The General Counsel contends that Respondent violated Section 8(a)(1) of the Act by unlawfully conveying to the employees the futility of selecting the Union as their bargaining representative because, under the Company's master plan for bargaining, it would make only a single proposal on a take-it-or-leave-it basis. The General Counsel contends that this contention is established by evidence of five separate statements by company supervisors to employees at various times during the preelection period describing such bargaining tactics in almost identical terms and thereby conveying to the employees the clear message, which was reasonably understood by them as a company statement, that it would be futile to designate the Union as collective-bargaining representative because the Company would in any case bargain on a one proposal, take-it-or-leave-it, basis resulting in no advantage for the employees over what the Company would have granted without the Union.

The first of these alleged threats involved Supervisor Spencer Senters and employee James Hale. Hale worked as a draw bulk operator in the T-13 area. In the latter part of March he with 10 or 12 other employees in the area attended an information and discussion meeting (I&D meeting) presided over by Senters, his second line supervisor.[6] Senters told the employees present that in bargaining other companies negotiate with unions by a method of offers and counteroffers until agreement is reached. He said DuPont negotiates differently in that it uses a four part approach in which matters to be discussed are divided into four broad categories of wages, benefits, contract terms, and other items that the law requires to be bargained before changes are made. Using a blackboard he graphically illustrated these categories, drawing a column for each. He described how DuPont negotiators listen to and consider union proposals in each category which together make up the union package of proposals. After considering these, company negotiators then respond with a package made up of the best counterproposals which the Company can make in each category. Senters went on to say that the Union, after considering these company counterproposals, "would either accept them or—." Then, without finishing his sentence, he turned to the blackboard and wrote the word "strike."

I base the foregoing findings on the credited testimony of Hale. Senters' testimony is generally consistent with Hale's. To the extent that they disagree on details, I credit Hale who gave a lucid account of how Senters used the blackboard, an account which Hale would not be likely to invent. Senters testified without contradiction, and I find, that his closing remark to the group was that he wanted to make sure that they understood one point, that he was not telling them that DuPont would not bargain if a union were voted into the plant.

Hale also testified about a conversation in early March among himself, another employee, and a supervisor named Jimmy Spencer. In a footnote in his post-hearing brief counsel for the General Counsel moves to amend the transcript by substituting the name "Spencer Senters" wherever Hale refers to Jimmy Spencer. I deny the motion because (a) it does not comply with the Board's Rules and Regulations, Section 102.24, and (b) there is no basis other than speculation for finding that Hale meant Spencer Senters when he said Jimmy Spencer.

I find that at the I&D meeting in late March Spencer Senters conveyed to the employees present the idea that, if the Union were chosen to represent them, the Company would negotiate with the Union by listening to union proposals and then making a single final overall package counterproposal which the Union could accept, but, if it did not, a strike would result. I further find that from this the employees would reasonably conclude that the necessary implication from Senters' statement was that by such company bargaining tactics the employees would end up with no better terms and conditions of employment than if they had no union representation. Senters thereby informed the employees that it was futile to select the Union to represent them. In making such statements he violated Section 8(a)(1) of the Act. *Cham-*

[6] It is established plant practice for shift supervisors to hold monthly I&D meetings with employee groups small enough to allow useful discussion.

pagne Color, Inc., 234 NLRB 82, 87 (1978); *Montgomery Ward & Co., Incorporated*, 234 NLRB 13 (1978).

6. Acuff solicits Qualles to remove union insignia

During the campaign James Qualles worked as a draw twist operator in the 9–B textile area under the supervision of Robert Acuff. As one of the more highly visible union proponents, Qualles typically wore one or more union insignia promoting the union cause. On a date not specified in the record, but during the campaign, Qualles asked Acuff for permission to leave his work station, his own work being caught up, and go to another area called beaming to visit an employee there. According to Qualles, whom I credit, Acuff gave his permission provided Qualles would take off his union insignia, explaining that if he did not Acuff would be receiving telephone calls from the beaming area supervisors as soon as Qualles arrived there. Acuff said his comments were off the record and, if he were questioned, he would deny them. Qualles understood, I find correctly, that Acuff was not denying him permission to go to the beaming area but was requesting that he first remove his union insignia. Qualles replied, "Well, if I have to take my buttons off and my union literature off I don't need to go there." Nevertheless, a short while later, he departed his own area in order to visit the employee in beaming, his understanding being that Acuff was not denying him permission to go but was requesting that he remove his union insignia before he did so, a request which Qualles rejected. He did not remove any of his insignia and no adverse consequences resulted therefrom.

Acuff generally corroborates Qualles, although his version is somewhat milder. According to Acuff he told Qualles he could go, but it would be better if he were not so decked out, meaning the union insignia. Acuff further explained that he expected, that if Qualles showed up in the other area wearing his usual insignia, Acuff as his superior would receive telephonic inquiries from supervisors in the other areas checking as to whether Qualles in fact had permission to be away from his area. It is implicit in this explanation that, if Qualles appeared in beaming wearing no union insignia, Acuff would not receive the unwanted calls. Whatever Acuff's motives, they were not based on any practical considerations of safety or of interference with production which might justify managerial interference with, or limitation on, the exercise of employee protected rights. It is immaterial that Qualles did not take Acuff seriously and ignored his request. Objectively, Acuff's communication as a supervisor to Qualles, an employee subject to his discipline, was a coercive interference with, and a limitation on, his Section 7 rights to display his union sentiments on his clothing. There being no valid business justification for such limitation, it was a violation of Section 8(a)(1) of the Act.

7. Rowe's interrogation of Watkins

As previously noted, Ronald Watkins worked on special assignment in the T–13 area. About 2 or 3 weeks before the election, sometime between April 4 and 11, Watkins wore a Teamsters T-shirt in the plant. Third Line Supervisor Joseph Rowe came up to him and asked, "What are you doing with that tee shirt on?" Watkins responded, "Well, I needed someone to represent me." Rowe just turned, shook his head and went the other way. The implication from this rhetorical question clearly was that Watkins had no business identifying with the Teamsters.

Rowe denied generally that in April he asked Watkins or any employee during the campaign why they were wearing the union T-shirt or what the employee thought the Union was going to do for him. As between Watkins and Rowe, Watkins' testimony has the advantage of being a specific account respecting an incident that was personal to him and, therefore, something he would likely recall. Rowe, on the other hand, in his capacity as a supervisor during the campaign estimated that he had talked with a couple of hundred employees about union-related matters. He admittedly could not remember each, or when they occurred, or what was said. Yet he testified that he specifically recalled he never had a conversation with Watkins pertaining to anything in the union campaign. This is not persuasive evidence. As between Watkins and Rowe, I credit Watkins and find that in early April, sometime between April 4 and 11, Rowe put the question to him noted above. As found elsewhere with respect to similar interrogations during the campaign, this was coercive and an interference with Watkins' Section 7 rights. I find that Rowe violated Section 8(a)(1) of the Act. *Blue Cross-Blue Shield of Alabama, supra.*

8. Senters' threat to deny promotion to Watkins

About 2 to 3 weeks prior to the election, around the time that Rowe interrogated Watkins, on an occasion when Watkins was in the shift office and wearing his union T-shirt, Senters commented, "If you hadn't been wearing all of this tee shirts and stuff you would have been supervisory material." Watkins responded, "Well, I don't want the headache, it is not for me."

Senters generally denied he made such a statement, but in view of Watkins' specific account, his forthright demeanor, and the absence of any erosion of his testimony on cross-examination, I credit his account rather than the contradicting general denial of Senters.

The substance of Senters' comment was that, but for Watkins' exercise of his legitimate right to wear insignia on his clothing, he would be eligible for a supervisory position. Thus, the price of his union support was forfeiture of the opportunity for promotion. Such a comment necessarily violates Section 8(a)(1) of the Act.

9. O'Dell's threats of futility to Billingsley

As already noted, David Billingsley worked in the cordura room of area T–13. He and Phillip O'Dell, the shift supervisor in that area, were well acquainted and over the years had often engaged in friendly conversation.

Sometime during the first or second week of April, while Billingsley was at work, O'Dell approached him saying, "Brother Dave, let's talk about the Union." They then discussed the Union, O'Dell noting that the Union

could not have helped two women employees who sometime earlier had been discharged for cause. The conversation then turned to what Steve Fisher, a Chemical Workers representative, had said at a recent meeting at the Teamsters hall regarding what the Chemical Workers Union had won in wage negotiations at a DuPont plant in Texas. Apparently Fisher had stated that the Company had offered an increase of 6 percent which the employees rejected, and subsequent bargaining resulted in agreement on an increase of 8 percent. O'Dell told Billingsley that Fisher was wrong, that the Company did not offer a package and then come back later and give another one. He said that when the Company makes a package proposal, that is it. When Billingsley expressed doubt as to the accuracy of O'Dell's comments, O'Dell offered to produce the negotiator for the Chemical Workers who had negotiated the Texas contract for Billingsley to talk with.[7]

The conversation next turned to the topic of benefits and wages. On this O'Dell told Billingsley that wages and benefits are not negotiable items. Billingsley asked O'Dell if he was sure about that and O'Dell replied that he was not sure, he was positive. He then said maybe he did not know, that the best thing for Billingsley to do was some soul searching on the matter.

Although on cross-examination Billingsley's testimony regarding his conversation with O'Dell was somewhat impeached by his failure to satisfactorily explain why he had not included some parts of the conversation reported in his pretrial affidavit given June 14, his testimony is, nevertheless, the more credible evidence respecting the conversation.

O'Dell testified he had had many conversations with Billingsley and it was difficult to recall any particular one. He testified generally that he did not recall any conversation in which he told Billingsley that DuPont would not negotiate with the Union concerning wages or benefits. However, he did recall talking with him about wages at the Company's Houston plant and Billingsley recounting to him what someone had said they had gotten in negotiations there. He denied, however, making any comment respecting Fisher or offering to produce a negotiator in the Houston bargaining. He also testified he did not recall making any statement to Billingsley that wages and benefits are not negotiable. However, he went on to testify as follows:

> The only comment that I ever made to David Billingsley concerning wages and benefits was basically the same comment I made to all my employees when we discussed wages and benefits, and that is, that in negotiating wages and benefits, that the DuPont Company, whether it be in dealing with the Union, or in benefits that affect all DuPont's employees, when there were revisions to be made or changes to be made for contracts to be negotiated, the DuPont Company, or individual plant that was dealing with the Union, would look at what they felt was best for their employees, for those employees involved, and when they went to the bargaining table to make an offer, that they went and made their best offer first.
>
> And as far as the benefits that affect all DuPont employees, such as pension, retirement plan, thrift plan, those sort of things, I told David that the group of people, whoever this was that was responsible to keep up with those programs or benefits, when they felt a change was needed, then they would do the same thing; they would look at what was best, what the Company felt was best, what they could do, and then they would make this change known if it was to a plant that had a union. They would review it with the Union and then with whoever it needed to be reviewed with, or whatever process they used, and then this would be published and known.

On cross-examination O'Dell explained that under DuPont's system this would be their first offer but, that if this were not agreeable, then the bargaining process would be put into motion. He categorically denied telling Billingsley that DuPont makes one offer and that is it.

I do not credit O'Dell for the following reasons. Although he and Billingsley had many conversations, O'Dell admittedly discussed the bargaining process with all employees under his supervision, not just Billingsley. Under these circumstances his recall of exactly what was said in talking with Billingsley would likely be less accurate than that of Billingsley who did not have these supervisory responsibilities. Although O'Dell may have developed a set speech through constant repetition, that does not fit with the specific evidence of his conversation with Billingsley nor with the familiar relationship between them.

Further, O'Dell was a disingenuous witness. During the preelection period he like other supervisors explained to rank-and-file employees on a regular basis the Company's antiunion position. Yet his testimony respecting the Company's long-established bargaining policy does not coincide with that set forth in company bulletins to its supervisors distributed during the preelection period. Thus, the bulletin notes that the company approach to bargaining differs significantly from the conventional approach used by most of industry in that in bargaining it does not hold back but offers what it can consistent with fair employee treatment and good business practice, and that this approach is not altered by strikes or threat of strikes. The bulletin notes three basic differences between the DuPont approach and that found in industry generally. The first is that in most industry collective-bargaining agreements the contract covers most topics including wages, benefits, administrative policies, and other conditions of employment. By contrast, in DuPont collective-bargaining agreements wages are separate from the contract and are not tied to the term of the contract. Benefits are also separate from the contract, being set by the industrial relations plans and policies system of the corporation and being uniform in all plants. The second difference is that in the conventional bargaining situation

[7] Although it seems illogical that O'Dell would have offered to produce a union negotiator, the evidence is unambiguous and permits no different construction.

the union starts bargaining with excessive demands while management counters with inadequate counterproposals followed by a marathon "give-and-take" series of negotiations which may ultimately result in agreement on a middle ground. By contrast, "DuPont's approach, after considering all factors, is to make a firm offer." The third difference (which perhaps is not pertinent here) is that most industry bargaining is done in secret while DuPont insists that bargaining be done in a fishbowl atmosphere. A final point made in the bulletin is that company policy has been to resist strikes in support of union bargaining demands by continuing to operate the plant with nonunit employees, a plan which has proved successful. Read as a whole this bulletin can only be understood to mean that company policy in making its "firm offer" is to make its best offer first and to hold firm to that proposal even in the face of a strike. Implicit in the policy is that all company bargaining is consolidated into the Company's "best offer" and that this is the last and only offer the Company will make. Considering O'Dell's 15-year tenure as a supervisor, there can be no doubt that he understood this policy. Moreover, the policy is consistent with what Billingsley understood O'Dell was telling him. Accordingly, O'Dell's testimony that bargaining would follow union rejection of the Company's "best offer" must be considered an inaccurate statement under oath. For these reasons, and even though I am not entirely satisfied with the testimony of Billingsley, I consider it the more credible of the two and therefore base my findings on it.

I find that in making the statements to Billingsley as reported by him, O'Dell expressed the company policy that if the Union were chosen to represent the employees the Company would not engage in give-and-take bargaining but would make its best offer first and in effect said the Company would hold firm to that. In hearing this prediction, employees such as Billingsley could reasonably conclude that by selecting the Union they would end up with a bargaining result no better than if they had no union and, therefore, it would be futile to support the Union or to have union representation. For O'Dell to make such predictions of future company conduct was an interference with employee Section 7 rights and a violation of Section 8(a)(1) of the Act.

10. Wisseman interrogation of Snow

At the time of the preelection campaign Edwin "Bud" Wisseman was safety engineer as well as protection superintendent for the plant and a member of the management team. In the campaign he had a special assignment to assist in composing company "fact sheets" which were distributed by supervisors among the employees for the purpose of presenting management's point of view and offsetting the Union's organizing. Employee Leroy Snow, Jr., a yarn inspector in the T-13 area, and an outspoken union supporter, was well acquainted with Wisseman. Over an extended period of time long antedating the union campaign but continuing into the preelection period, the two engaged in numerous discussions on a wide range of topics of mutual interest including, among others, sports, economics, social problems, and unions. Snow's views in support of unions generally were well known to Wisseman long before the Teamsters campaign began. During that campaign their conversations were more or less repetitive of earlier ones with the addition that Snow talked about the things he expected the Teamsters to do for him, and Wisseman stated his belief that most of those things would not in fact happen.

Wisseman testified credibly that on those occasions on which they discussed unions Snow, and not he, initiated the topic. Wisseman credibly denied asking Snow the question, assuming the Union was voted in and then did not do what the employees expected, what then? He also denied asking Snow whether he would be one of those who would then support decertification of the Union. Wisseman testified that he believed that Snow was firm in his support of the Union. He also denied asking Snow how he felt about the Union or what he felt the Union could do for him. He explained this by testifying that he never had to ask because even before the campaign Snow had made his position clear and there was no need to ask him what his views were.

On cross-examination Wisseman admitted that he discussed with Snow those things the Teamsters could do for him as an employee and some of the reasons why he might have wanted to have a union represent him in the plant. He also expressed his sentiments that he did not believe the Teamsters could do all the things it promised. He also admitted that he had numerous conversations with many employees, as well as Snow, regarding employee concerns about the things unions could do for them, and Wisseman's belief that the Teamsters could not deliver on all their promises. He further admitted that he asked some employees how they would feel if all union promises were not kept. He also admitted that over the extended period of the campaign he must have touched on the topic of decertification of a union in his discussions with Snow. He denied, however, asking Snow how he would feel if the Union did not fulfill all of its promises. But he did admit asking Snow on April 20 whether Snow would be willing in the future, in case events proved him wrong about the Union, to come to Wisseman and admit he had been wrong, even as Wisseman was willing to agree to come to Snow if events went the other way. He testified credibly that his best recollection was that he did not ask Snow how he would feel if the Union did not fulfill all its promises.

Snow's testimony conflicts with Wisseman's. As between the two, Wisseman was the more impressive witness. Snow testified that during the preelection campaign he on several occasions had discussions about the Union with his supervisors including Charles Kennebrew, Philip O'Dell, James Kyle, and Wisseman. He was asked when he had "the" conversation with Wisseman and answered somewhat vaguely that it was 2 or 3 weeks before the election. Snow reported that while Wisseman and he were talking, Wisseman asked him what if the Union got in and did not do the things the employees expected it to do, what then? Snow testified that he replied that they could decertify the Union, to which Wisseman responded that it would not be as easy as it seemed, and asked Snow whether he would be one of the ones to lead the decertification of the Union like he was now

campaigning for the Union. Snow testified that he stated he would because he felt he would be obligated to do so since he had led employees toward the Union. He testified that Wisseman commented that instead it would be people like Mrs. Wisseman (an employee opposed to the Union) who would lead a decertification movement. There followed a series of questions in the examination which leave the record unclear as to whether Snow's answers refer to the same occasion as his prior testimony or other occasions when he conversed with Wisseman. He was then asked whether there was any further conversation about the Union and he reported, "We talked about the things that I felt it would do for us and things like, uh, how it would help us, we talked about that." Snow then testified in answer to a leading question that "He asked me the things I thought would be accomplished by having a union, and what would it do for us." On cross-examination Snow admitted that parts of the discussions with Wisseman to which he had referred on direct had occurred on different days.

All in all Wisseman was less vague, more responsive, and a more believable witness of the two. Accordingly, insofar as their testimony conflicts, I credit Wisseman, including his denials that he questioned Snow in a coercive manner thereby interfering with Snow's Section 7 rights and violating Section 8(a)(1) of the Act.

11. Harris' threats of futility at the I&D meeting

At the time of the preelection campaign Shift Supervisor Ulysses "Cotton" Harris supervised approximately 100 employees in the 9-B textile area. During April he held I&D meetings with his shift employees, each including from 12 to 15 employees. Employee James Qualles attended one of the meetings on the evening of Wednesday, April 11, 2 weeks prior to the election. As was his practice, Harris began by discussing changes in the business situation, then asked if there were any questions concerning the business situation or any complaints about jobs. According to Qualles, another employee raised a question as to how the Company would negotiate wages with the Union. Harris replied that DuPont did not negotiate wages. He explained that what he meant was that DuPont and the Union could not consider proposals and counterproposals on wages because any decision made on wages would affect other DuPont plants as well as the Chattanooga plant.

Harris denied stating that DuPont would not negotiate wages with the Union. I do not credit his denial because the remark attributed to him was a logical preliminary to other specific remarks which he admittedly made. Moreover, Qualles attended only one such meeting that month while Harris presided over seven or eight and his specific recall of any particular meeting likely would be less precise than Qualles' recall of the one he attended.

Harris recalled a question coming up in some I&D meeting in April about how DuPont negotiates contracts with a national union. He thought that one of three or four employees could have raised a question of how DuPont bargained with a national union. He testified that he answered as follows:

> I told them that usually, I believe I explained a little bit, that the Unions and Companies usually made offers and counter offers to settle somewhere in between, but that DuPont usually made an offer that after taking consideration of the employees' needs and the needs of the business, and made their best offer.

Harris also recalled that an employee whose identity he could not recall asked about whether wages were negotiable. Harris was not sure whether the question was raised in one of the April meetings, or about the same time on the floor of the plant, or in the rap shack. He gave the following ambiguous answer, "I guess that the Company would not negotiate, that all the items were negotiable."

On cross-examination Harris affirmed that normally bargaining between an employer and a union involves one side putting up an offer and the other side putting up a counteroffer, with the negotiators going back and forth, but that DuPont does it differently in that it takes into account the needs of employees as well as other factors and then comes up with its best offer. He also affirmed on cross-examination that during the preelection period he told employees that he did not know if the Union could get them any more money.

On cross-examination Qualles testified that at the I&D meeting which he attended, Harris said the Company was required by law to bargain in good faith, and also, when an employee inquired on that topic, said it would not negotiate wages. Qualles testified, "Mr. Harris said it would not negotiate wages because if they sat down and negotiated wages, it would affect the other plants, as well as Chattanooga's plant."

I find that, by contrasting the way DuPont bargains with the manner in which negotiations usually are carried on, and by making such statements to employees during the preelection period, Harris in substance informed them that if the Union were selected as the representative of the Chattanooga plant employees DuPont would not be negotiating with the Union in the give-and-take manner in which employers and unions normally negotiate. I further find that by stating that in negotiations with the Union, should it be selected by the employees, the Company, instead of bargaining by the give and take of offers and counteroffers, would make its best offer, Harris implied that the Company would make only one offer and that it would not thereafter deviate from that proposal. From these statements the employees reasonably could understand that Harris was predicting that DuPont would adopt a take-it-or-leave-it position by settling on a single "best" offer to which it would adhere and which, once stated, would not thereafter be negotiable. I further find that, hearing this prediction, the employees could only conclude that he was advising them that it would do them no good to have union representation because, even with union representation, the Company would, as was its practice in the absence of a union, settle upon what it deemed best for the employees, would adhere to that position with an unchangeable purpose, and in the final analysis it would prove to have been futile for the employees to have selected the Union.

This I find was a violation of Section 8(a)(1) of the Act. *Champagne Color, Inc., supra; Montgomery Ward & Co., supra.*

12. Hutcherson's interrogation of Swearingen

During the preelection period Helen Swearingen, who was very active on behalf of the Union, worked in the T-32 area as a miscellaneous operator. One of her duties was to transfer finished yarn from that area to the T-37 area where Joe Hutcherson was section supervisor. About 2 weeks before the election, approximately April 11, while Swearingen was making one of these deliveries of yarn to the T-37 area, Hutcherson asked her if he could ask a question. She replied yes. He then asked what "they" had ever done to make her so strong for the Union. She replied that she just believed in unions, that she thought everybody ought to have a union. Hutcherson commented that that did not leave him a whole lot left to say. Swearingen understood that when Hutcherson said "they" he referred to the Company. The above findings are based on the credible testimony of Swearingen.

Hutcherson did not directly deny that the conversation as reported by Swearingen occurred, his testimony being that he did not recall such a conversation. On the other hand, he admitted to similar inquiries and remarks made to one or two other employees. Considering that Swearingen was a high profile union supporter, known to Hutcherson as such, and that Hutcherson had similar conversations with other employees, I do not credit his indirect denial that the conversation as reported by Swearingen in fact took place.

It is established beyond question that employee freedom to exercise Section 7 rights includes freedom from employer inquiries respecting employee views about unions. An aura of coercion attaches to questions by a supervisor, who has the power to discipline, put to a rank-and-file employee in the workplace. *Blue Cross-Blue Shield of Alabama, supra.* Accordingly, I find that Hutcherson's question put to Swearingen was a violation of Section 8(a)(1) of the Act.

13. Standefer's interrogation of Cochran

At the time of the campaign Ricky Cochran worked as a miscellaneous operator in the T-13 department. He testified that in about the second week in April (April 8-14) Darrell Standefer, a member of the management support team and a supervisor, asked him what he thought of a union and did he think it would get in at DuPont. At the time Cochran was in his own work area. Standefer was passing by, stopped, and put his questions to him. Cochran replied that he had no comment. That ended the conversation.

When he testified Standefer was asked whether in early April he had asked an employee or employees in the T-13 area what they thought about the Union and if they thought the Union would win the election. He replied, "No." He testified on cross-examination during the preelection campaign he never initiated any conversations with any employees respecting the union campaign. He was further asked if he knew Cochran and admitted he did. He was then asked if he recalled ever having any discussion with him. He responded that he talked daily with Cochran, but he did not remember a specific conversation such as Cochran had reported in his testimony. He further testified he could not recall specifically what was said in the conversations which he did have with Cochran. With the evidence from two credible witnesses in this posture, I credit the more specific account of Cochran over the more general one of Standefer because for Cochran the encounter was a personal experience which he more likely would recall. I find, therefore, that Standefer asked the question in the form reported by Cochran.

I further find that this inquiry, being put by a higher supervisor to a rank-and-file employee in the workplace during working hours, was coercive and an interference with Cochran's Section 7 rights because it called for him to reveal his views respecting union representation and his prognosis of the chances of the Union's winning the election, both matters about which management had no right to probe. Accordingly, I find that Standefer violated Section 8(a)(1) of the Act. *Blue Cross-Blue Shield of Alabama, supra.*

14. Wright's threat of reprisal to Sharp

As already noted, union campaign devices included insignia on various types of clothing and various union buttons with promotional legends. Joel Sharp, an active union proponent who worked as a spinning operator in the T-33 area, credibly testified without contradiction that about 2 weeks before the election he brought into the plant a bag of a new style of union buttons, placing the bag on his desk. James Wright, the shift supervisor, came up to him and asked if he had union buttons in that bag. Sharp denied that he did, saying that it was his lunch. Wright then stated, "I hope that you are not passing out union buttons, you could get into trouble for passing these out."

Coming from the mouth of the supervisor, this remark necessarily carried the implication that legitimate distribution of prounion buttons would result in some unspecified adversity to the employee at the hand of management and with respect to the employee's employment. I find Wright's statement violated Section 8(a)(1) of the Act.

15. Uren's interrogation of Jackson

Jerry Jackson was a denier operator in the T-33 area. Since the first of January and throughout the preelection campaign Claude Uren was his first line supervisor. Jackson, a visible union supporter, wore various prounion insignia in the plant, facts known to Uren. Jackson testified credibly that a week before the election Uren approached him at his work and asked him why he wanted a union. Jackson responded that it was because of the Company's slowness in responding to employee grievances.

Uren categorically denied making such an inquiry or having such a conversation with Jackson. Both appeared to be credible witnesses and there is little to choose from in resolving the conflicts in their testimony. Jackson's

testimony has the advantage of being more specific in that he was describing a specific event. For that reason I credit him and find that, about a week before the Board election, Uren asked him why he wanted a union and that Jackson replied giving him his reasons. I further find that this occurred in the plant during working time. Because of the relative status of the two participants and the context in which the inquiry was made, I find it to be coercive and an interference with Jackson's Section 7 rights. Accordingly, in making the inquiry Uren violated Section 8(a)(1) of the Act. *Blue Cross-Blue Shield of Alabama, supra.*

16. Pickett's interrogation of Frazier

About a week before the election, around April 17 or 18, Bobby Joe Frazier, a rank-and-file electrician working at the time on the second floor of the T-33 area, had a conversation with the T-33 relief supervisor, Ralph Pickett. Pickett initiated the conversation. According to Pickett, he asked Frazier how he thought the union campaign election was going. Frazier replied that he thought the Union was coming in.

It is undisputed that Frazier was an ardent union supporter and known to be such among fellow employees and among the supervisors, including Pickett. Other electricians had indicated to Pickett that they believed Frazier to be totally committed to the campaign, a conclusion which coincided with things Pickett himself had observed, and that at shift breaks all Frazier wanted to discuss was the union campaign. Pickett considered this a dangerous distraction because at shift break time it was normal for departing personnel to pass on to oncoming personnel information needed for the job, such as what jobs were left over to be completed and what jobs an oncoming electrician could expect to perform. Because electricians worked with electrical voltage, distraction from the job could involve some danger. Pickett felt that Frazier was being distracted from his job in the above respects by his total involvement in the union campaign. Although he had observed no differences in the quality of Frazier's own work, he expressed to Frazier his concern and the concern of fellow electricians about this commitment to the union campaign and his being distracted by the campaign. According to Pickett, whom I credit, Frazier on hearing this became emotional, accusing Pickett of asking him how he was going to vote. Pickett denied doing so. Frazier declared nobody knew how he was going to vote. Pickett then pointed out to him that he obviously had displayed his support for the Union. At the end of their conversation Pickett told Frazier that, if he could help him in any way, Frazier could call on him. I find that in making this remark Pickett was referring to help on the job. I base this on Pickett's credible testimony and his explanation that the two men had worked together for years with the mutual understanding between them that Pickett's help on job-related problems was available any time Frazier called on him.

Frazier contradicts Pickett in many respects. He testified that Pickett stated, "I see some of the boys have got you to wear a T-shirt and I don't know why unless it is to keep them from harassing you." Pickett denied making this statement, explaining that he did not believe that was why Frazier wore a union T-shirt. I credit Pickett's denial. Frazier also testified that Pickett informed him, "Some of the boys want to know how you're going to vote." According to Frazier he then declared, "It's none of your business or none of any of the boys' business." And that Pickett then said, "Well, you know, man to man." Although Pickett did not specifically deny making this statement with respect to some of the boys, he testified credibly that in the course of the conversation Frazier became emotional and declared that Pickett was asking him how he was going to vote which Pickett denied. Further, Pickett denied making a statement with respect to a man-to-man communication.

As between the two, Pickett was the more credible witness. In discussing his pretrial affidavit it became obvious that Frazier was not certain as to the sequence of the various statements he reported. Pickett seemed more certain. As noted above, Pickett credibly denied he asked Frazier how he was going to vote. This seems consistent with the objective facts of Frazier's visible and ardent support of the Union from which Pickett and Frazier's fellow employees undoubtedly would have inferred that he would vote for the Union. There being little doubt as to where Frazier stood respecting the Union, there would be little reason for Pickett to ask how he would vote. Finally, Pickett had a valid job-related concern respecting Frazier's being distracted from his duties at the time of shift breaks. That appears to have been Pickett's motivation in initiating the conversation, a motivation consistent with his denial that he asked Frazier how he was going to vote. Further, although Pickett's actions were partly based upon what he had heard from other electricians, that information was job related and did not deal with harassing tactics by other union supporters. Also, Pickett credibly testified, having long worked with Frazier, that he did not evaluate the man as one who would visibly support the Union because other union supporters were harassing him. Finally, both Frazier and Pickett agree that the last thing Pickett said was to the effect that if Frazier had any problems to let Pickett know. The inference from Frazier's testimony is that this related to problems with other employees respecting how Frazier was going to vote in the Board election. Pickett's more credible testimony relates the comment to a longstanding understanding whereby the supervisor was available to assist Frazier on job-related problems. For these reasons I credit Pickett over Frazier.

As found above, Pickett, the supervisor, initiated the conversation by inquiring how Frazier, the employee at work, thought the union campaign election was going. In the context in which the question was put, and irrespective of Pickett's motivation, it was inherently coercive and an interference with Frazier's Section 7 rights. Pickett spoke with the mantle of employer authority and his question, if answered, logically required Frazier to declare his thoughts about the Union's prospects and to provide the employer with an evaluation which the employee might or might not desire to supply. The inquiry may have been introductory, but that is beside the point. It nevertheless constituted objectionable managerial probing on a topic which was not job related and about

which management had no business inquiring. I find that in making this inquiry Pickett violated Section 8(a)(1) of the Act. *Blue Cross-Blue Shield of Alabama, supra.* The evidence does not establish that Pickett otherwise violated the Act.

17. Wright's threats of futility to Sharp

As already noted, Joel Sharp, a longtime DuPont employee, worked as a spinning operator in the T-33 area. He considered himself and James Merriman (one of the alleged discriminatees herein) the two most active union proponents in that area. About a week before the Board election he and Merriman got into a conversation about the Union with their supervisor, James Wright. Sharp recalled that Wright stated the following:

> He said he didn't see that the Company would give any more than they were giving regardless of whether we went union or not. We had a job to do and had to work together and joining the Union they wouldn't go any more money, or it wouldn't change things.

This being the only evidence respecting this incident, and it being credible, I find that Wright made the statement. He thereby plainly conveyed to the two employees the idea that employees in the plant would gain nothing by voting for the Union, or by union representation thereafter should they select the Union as their representative because the Company would not give any more than before. For a management representative to so suggest the futility of employees freely exercising their statutory rights violated Section 8(a)(1) of the Act. *Champagne Color, Inc., supra; Montgomery Ward & Co., supra.*

18. Wright's interrogation of Sharp and Merriman

Sunday was the last day on which Sharp and Merriman worked prior to the Board election on Wednesday, April 25, and Thursday, April 26. On Sunday, April 18, toward the end of the shift, at a time when Sharp and Merriman were in the vicinity of the "darkroom," Wright asked them if they really thought they were going to win. They answered yes. I find that Wright was referring to the soon to be held Board election.

Since the question was put by a supervisor in the workplace during working hours to rank-and-file employees and, if honestly responded to, called for them to reveal their thoughts respecting the upcoming election, it was inherently coercive and interfered with the right of employees to exercise their guaranteed rights free from the meddling of management. Accordingly, I find that on that occasion also Wright's interrogation violated Section 8(a)(1) of the Act. *Blue Cross-Blue Shield of Alabama, supra.*

19. Denial of access to the plant prior to the election

The complaint alleges that during the week of the Board election the Company promulgated and enforced a rule denying vacationing employees access to the plant except for the purpose of voting, and that this rule unlawfully restricted employee exercise of protected rights to solicit for the Union and distribute literature during the election week.

Merriman and Sharp arranged to take their vacations during the week of the election. On the Sunday prior to the election, the last day before their vacations, they asked Wright for permission to enter the plant while they were on vacation. He denied them permission, admittedly on the ground that it was the week of the election. According to Wright he was unaware of any rule restricting access to the plant of vacationing employees. In the past, retired employees had been allowed in the plant for social visits in the cafeteria and elsewhere with other employees.

It is obvious that denial of permission for Merriman and Sharp to enter the plant during their vacations was a departure from this past practice and was imposed for the purpose of limiting employee union activities prior to the Board election. I find this was an unwarranted limitation of their Section 7 rights and a violation of Section 8(a)(1) of the Act. *Tri-County Medical Center, Inc.*, 222 NLRB 1089 (1976); *GTE Lenkurt, Incorporated*, 204 NLRB 921 (1973).

20. O'Quinn's interrogation of, and threat to, Campbell

At the time of the campaign, James Campbell was a spinning operator in the T-33 area. A day or two prior to the election, according to Campbell, he entered the denier room, which was used for breaks, and found several employees including Ray Cordell talking with Supervisor Willa Jean O'Quinn. Campbell joined the conversation. They were discussing certain company campaign literature opposing the Union which purportedly made reference to the Company's negotiating team. Campbell and O'Quinn began arguing, O'Quinn telling him that the DuPont negotiating team was very good and would be hard for the Union to negotiate with, and that, in order to get anything, the Union would have to give up something. She also referred to the 9-B textile area, which at the time was not making money, asking Campbell whether, if the Union got in and the employees did not get what they wanted in negotiations, they would strike. Campbell replied that he supposed they would. O'Quinn then commented that if the 9-B textile area were once closed down the Company would never start it up again, which would mean a loss of jobs for 800 persons. She then asked Campbell where that would leave him if that occurred. He replied he supposed he would stay where he was. I base the above finding on the credible testimony of Campbell who was forthright and specific.

O'Quinn generally contradicted Campbell. Although she admitted that a conversation occurred about the time he indicated, she said only one other person was present, Sonia Wisseman. Neither Cordell nor Wisseman was called to testify. I credit Campbell over O'Quinn because the conversation was a special experience for him and one which he likely would recall. O'Quinn, on the other hand, had numerous conversations with employees about the union campaign, this being part of her assigned duties. Also, much of her testimony is consistent with,

and in a sense corroborates, Campbell's. She confirmed that the 9-B textile area had been a continuing business problem, in that business had fluctuated constantly, and the operation was not a positive moneymaker. She also confirmed that during the preelection period management issued numerous fact sheets for distribution to all employees which became subjects of discussion among employees and with supervisors. In connection with a management fact sheet designed to demonstrate a loss of jobs in plants organized by the Union, she had discussed with employees the general concern about 9-B textile shutting down in the event of a strike. She was unable to recall the details of her numerous discussions.

In asking Campbell whether he would strike I find that O'Quinn unlawfully probed his union sentiments and intentions respecting his exercise of his Section 7 rights. I further find that, taken as a whole, her remarks respecting the 9-B textile area was in substance a threat that if the employees selected the Union and a strike followed, that area would not thereafter reopen and 800 jobs would be lost. This was an unlawful threat because it was a management prediction of what management would do if employees utilized their statutory rights. In both respects she violated Section 8(a)(1) of the Act. *Blue Cross-Blue Shield of Alabama, supra.*

21. Wiley's threats of futility to Jones

Gary Jones, one of the alleged discriminatees, worked as a draw bulk operator in the T-13 area. James Wiley supervised the entire shift. Jones and Wiley agree that a day before the election they had a conversation in which Jones asserted that the Teamsters would win the election and Wiley contended they would not. In some other respects their respective versions of the conversation conflict.

According to Jones, Wiley came up to him in the main aisle of the cordura room and told him that the Teamsters was going to lose. Jones responded that it was going to win and that the Company would have to bargain with the Teamsters Union. Wiley then stated that it would listen but that is all it would have to do. Jones came back with the comment that it had never bargained with a union until it bargained with the Teamsters. Wiley then said that DuPont was not going to let Gary Jones stand in its way. Jones had the last word saying, "Anything the Company does to me, I'll be backed up."

Wiley, on the other hand, recalled that Jones approached him, commenting that the Union was going to win the election and win big. Wiley testified he only responded with, "Oh?" Jones repeated that the Teamsters was coming in. Wiley testified he then responded, "Well, good luck," and that Jones again repeated, "They are coming in big." According to Wiley, he wished Jones good luck if it did come in big, saying he would come down and congratulate Jones, and he hoped that, if it did not come in, Jones would be man enough to come to Wiley and congratulate him. Wiley testified that that was the extent of their conversation, that they did not discuss what would happen in negotiations with the Union, nor did he say that DuPont was not going to let Jones stand in its way. According to Wiley he at no time discussed with Jones DuPont's bargaining techniques. However, on cross-examination he explained that during the campaign he did discuss company bargaining methods with a number of other employees, whose identity he could not recall, using as his source of information for these discussions the supervisory bulletin on bargaining and results of bargaining issued by higher management on April 5 and distributed to supervisors for information and assistance in talking with employees.

I credit Jones and find the facts to be as he reported them. To the extent that Wiley's testimony conflicts with Jones, I do not credit him. In testifying both witnesses were forthright in their demeanor; both reacted well to the tests of cross-examination. The above credibility resolution is influenced by the following circumstances. Jones was a visible and active union proponent. He had worn Teamsters T-shirts and buttons long before the preelection period. In some measure he personified the Union and was a logical person for Wiley to discuss the election and possible future bargaining with and be the recipient of comments such as that the Company would not let Gary Jones stand in its way. Further, on June 21, between the time of the conversation in question and the hearing, Jones made a prior consistent statement in a sworn pretrial affidavit in which he reported the conversation substantially as given in his testimony at the hearing. Finally, Wiley, as a second line supervisor, had many persons under him and, accordingly, had numerous conversations with various employees throughout the preelection period on the general subject of union representation. He necessarily had many more such conversations with employees than Jones did with supervisors. In these circumstances Jones more likely had a better recall of the content of this particular conversation than Wiley.

I find that when Wiley indicated that if the Company had to bargain with the Teamsters they would listen but that is all it would have to do, he conveyed to Jones the idea that it would make no difference in the employees' situation if the Teamsters represented them in bargaining, that the Company would only listen and then would do what it would have done without union representation. This message is underlined by his closing comment that the Company would not let Gary Jones stand in its way. The import of Wiley's comments was that it was futile for employees to obtain union representation and bargaining. I find the comments interfered with employees' Section 7 rights and violated Section 8(a)(1) of the Act. *Champagne Color, Inc., supra; Montgomery Ward & Co., supra.*

B. *Discrimination*

1. Ronald Watkins' discharge

During the events pertinent to this case Ronald Watkins worked on special assignment in the T-33 area under the general supervision of Bryan Lane and Shift Supervisor Spencer Senters. In the last 5 days of his employment his immediate supervisor was Glenn Allen Aslinger. When Aslinger discharged him on May 15, 1979, less than 3 weeks after the Board election, Watkins had worked for the Company approximately 11 years.

a. *Watkins' union activities*

Watkins was an active union supporter. During the election campaign he attended about six union meetings; and on five or six occasions he distributed prounion material at the plant gate, including handbills, bumper stickers, decals, buttons, and T-shirts. He habitually wore numerous union insignia in and out of the plant, including a union hat, union T-shirts, and a union button on his doff bag. He obtained between 25 and 30 employee signatures on union authorization cards and received and delivered to the Union between 100 and 150 signed authorization cards of other employees. One of his fellow workers described him as the most active union supporter in his department.

b. *Company knowledge of, and animosity respecting, union activities of Watkins*

It is beyond question that management knew of Watkins' union activities. As early as late February Lane observed him obtaining the signature of Michael Byrd on a union authorization card and objected thereto. And, after further discussion of the matter with Watkins and Senters, Lane closed the discussion by informing Watkins the incident would be documented in his file. In early April Relief Supervisor Ben Miller, pointing to Watkins' union T-shirt, commented, "I thought you had better sense than that." Again in April, 2 or 3 weeks before the Board election, Supervisor Rowe asked him what he was doing with a union T-shirt on. And around the same time Senters in substance informed him that, if he had not been wearing his various union insignia, the Company would have considered him for a supervisory position.

c. *Concerted activities of Watkins*

Watkins was also known to company officials for his concerted activities on behalf of other employees. Thus, on Wednesday, May 9, only 2 days before the incident which resulted in his discharge, Watkins, Billy Joe Reed, the number one man of the doff crew for that shift, Guerry Porter, and his wife were in the rap shack when Aslinger came in wanting to know why the doff crew had left one machine down. Watkins replied that it was because they had no yarn. Aslinger then called Reed outside the shack, telling him he had an attitude problem. From there the two went to the office. Watkins and the others became concerned about the treatment of Reed, and Watkins, acting as spokesman, telephoned Senters to protest. He told Senters what had happened and also stated that they were going to come up to the office to talk with him because throughout the week Aslinger had been acting like he was mad at the whole world. Senters said not to worry about it, that he would take care of it. Twenty to 25 minutes later, not having heard from Senters, Watkins again telephoned him, saying they were coming upstairs to talk with him. According to Senters, he by then had seen neither Reed nor Aslinger. Watkins then went to the office and talked with Senters who apparently satisfied him because he returned to work.

From the above it is clear that, prior to Watkins' discharge, management knew of his union activities as well as his concerted activities on behalf of fellow workers. Aslinger in particular might have had reason to resent his activism because some of it involved complaints about him. However, it is not established in the record that he ever learned that Watkins complained about him, and the suspicious circumstances do not warrant an inference that he learned. See *United Broadcasting Company of New Hampshire, Inc. d/b/a WMUR-TV*, 253 NLRB 697 (1980).

While mere knowledge by an employer of an employee's union and concerted activities is not sufficient to establish unlawful motive in a discharge, as found earlier herein, Respondent is responsible for numerous other unfair labor practices, all independent violations of Section 8(a)(1). Certain of these incidents particularly involve Watkins and tend to show supervisory animus toward his prounion activities. Thus, Lane took him to task for obtaining a signature to a union authorization card and indicated the incident would be documented in his personnel file, and on the same occasion Senters interpreted a no-solicitation rule in overly broad terms. On another occasion Senters indicated his wearing of union insignia had cost him a chance for promotion. And, although not specifically directed to Watkins, the fact that Lane indicated to Billingsley that he would not be considered for promotion if he continued to wear union insignia and the statement of Wright to Sharp that he could get into trouble for passing out union buttons, both demonstrate a management disposition to take adverse personnel action respecting employees engaged in union activities. Because of these incidents and also because of the other numerous independent violations of Section 8(a)(1) engaged in by Respondent, I find that company supervisors, including Senters, harbored animus toward Watkins because of his union and concerted activities. *Smedberg Machine & Tool, Inc.*, 249 NLRB 534, 540 (1980).

d. *The circumstances surrounding Watkins' discharge*

When Watkins reported for duty on the day shift on Tuesday, May 15, he was discharged. Respondent contends that he was discharged for failing to satisfactorily perform his job, for falsifying records, and for misrepresenting what occurred on Friday, May 11. In its brief Respondent specifically relies on the first two of these grounds. Although not mentioned in Respondent's brief, reliance on the third is implicit in the position argued.

On Tuesday, May 8, following a 5-day vacation, Watkins returned to work on the midnight to 8 a.m. shift in the T–13 area. He was put on special assignment which involved performance of any tasks given him by supervision, and in particular the gathering of yarn samples for laboratory testing, the checking of hotplates on the draw-twist machines to determine whether they were operating within acceptable temperature limits, and relieving the patroller in the area. He then worked under the immediate supervision of Relief Supervisor Aslinger.

On May 8 Watkins, noting that the forms for recording hotplate temperatures had not been initiated by the prior shift, asked Aslinger if hotplate temperatures were still being checked. Aslinger replied they were. Watkins

said he did not intend to check hotplates since the prior shift had not filled out their part of the form. Aslinger directed him to perform his part of the paperwork anyhow and to check the hotplates. Watkins did so on May 8. I base these findings on the credited testimony of Aslinger which is supported by his written investigative report of the occasion. To the extent that Watkins' testimony is in conflict, I do not credit him. From other evidence in the record, I find that completion of the paperwork on hotplate temperatures was not a matter of overriding importance in the minds of either supervisors or employees charged with performing those duties.

The next day, Wednesday, May 9, Watkins followed his normal routine which included checking hotplates. His shift was uneventful except for the incident already noted involving Aslinger's treatment of Billy Joe Reed which prompted Watkins to complain to Senters about Aslinger. Thursday, May 10, was also uneventful, Watkins following his normal routine including the checking of hotplates. Aslinger concluded that Watkins checked the temperatures on May 8, 9, and 10 because he filled out the report forms for those days, but Aslinger did not actually see him check hotplates.

On May 11, Watkins again followed his normal routine to the extent of gathering laboratory samples, relieving the patroller, and going to lunch. I find he did not check hotplates although he filled out the reports as if he had.

Checking hotplate temperatures necessitates use of a pyrometer, an electrical instrument which, when not in use, is kept in a room adjacent to the shift office. At or about 5:20 a.m. on May 11 Watkins picked up the pyrometer from this room.[8] He returned to his work area with the pyrometer and entered the rap shack, remaining for about a minute to speak with Reed. He testified he then went out among the machines and began checking hotplates with the pyrometer, returning to the rap shack at or about 6 a.m. and remaining there until about 7:30 a.m. while transferring his information on temperatures from a card to the regular hotplate temperature patrol sheets. I do not credit Watkins' testimony to the effect that he was out among the machines checking hotplate temperatures from shortly after 5:15 until on or about 6 a.m. or his testimony that he actually checked the hotplates on May 11. He did not specify any occasion other than 5:15 when he said he obtained the pyrometer, nor did he specify any other period in the shift when he checked temperatures.

Aslinger saw his reports on hotplate temperatures on Tuesday, Wednesday, and Thursday and did not question the accuracy of those reports. But as of the end of the shift on Thursday he still had not actually seen him checking hotplates. Early in the shift which began at midnight on Friday, he reported to Senters that he had not seen Watkins checking hotplates and had some question whether he really made the checks. With Senters' cooperation they established surveillance of the pyrometer which was being electrically charged in the room adjacent to the shift office. Throughout most of the shift none of the supervisors in the office, which included Senters and at times Kendall, Norman Roberts, and Aslinger, observed anyone take the pyrometer.

At 5:20 a.m. Kendall saw Watkins pick up the pyrometer. He informed Aslinger of this and had Roberts deliver a note to Senters to the same effect. At 5:30 Aslinger saw Watkins enter the rap shack with the pyrometer. Aslinger continued to maintain uninterrupted surveillance of the rap shack until about 7:30 a.m. From 5:20 to 6:30 a.m. Roberts joined Aslinger in watching the rap shack, and from 5:45 to about 6:15 or 6:20 Senters also joined in the surveillance. During the period from 5:30 to 7:30 a.m. Watkins remained in the rap shack except for two short excursions outside. On the first of these he got up, walked outside the rap shack, stretched, turned around, and went back into the shack. The second excursion was at 7:11 a.m. when he emerged from the shack, went to the supervisor's desk, picked up a supply of hotplate temperature report forms and returned to the rap shack. I base these findings on the credited testimony of Aslinger, Kendall, Roberts, and Senters.

At or about 7:30 he came out to the supervisor's desk with completed hotplate temperature reports. Aslinger confronted him, asking if he checked the hotplates. Watkins responded that he had and asked why. Aslinger then told him, "It is against company policy to falsify a record" and indicated he wanted to see Watkins in the shift office. In the office Aslinger informed him that supervisors had been auditing him all night. According to Watkins, he also accused him of entering the rap shack when he returned from lunch and not emerging until 7:30, which Watkins denied. Regarding the assertion that he had falsified the records, Watkins asserted that the record entries were correct and that a check of the hotplates would verify their accuracy.[9] Aslinger informed him there was not sufficient time for him to have checked the hotplates. Watkins explained that he may work a little faster than others and that he might have done the task in 20 to 30 minutes although he did not have a watch on at the time. Considering the large number of hotplates to be checked, I find there was not enough time between the time Watkins picked up the pyrometer and the time Aslinger saw him enter the rap shack for even a very fast worker to carry out the temperature checks. As the shift was nearing its end and Watkins was ready to leave for home, Aslinger told him that supervision would let him know the outcome of their investigation on the following Tuesday when he was to come in for the day shift.

In disciplinary matters the personnel procedure generally used in the plant is to administer progressive discipline. This was not used with Watkins. However, in case of a serious act of misconduct, company procedures allow for discharge without going through the progressive procedure. When the progressive procedure is used the immediate supervisor talks personally with the em-

[8] Watkins estimated that it was approximately 5:10 to 5:15 a.m. when he obtained the pyrometer. Cecil Kendall, a supervisor who was in the shift office watching for Watkins when he picked up the pyrometer, noted the time as 5:20 a.m. I do not credit the testimony of Watkins that Senters, Roberts, and Aslinger were all in the office when he got the pyrometer.

[9] Subsequent investigation established that the temperatures entered on the reports were substantially correct.

ployee in an effort to correct the fault. Sometimes additional verbal instructions or admonitions are given in a further effort to influence the employee to self- help. The second step in the progressive procedure is one or more written "contacts" or reprimands to the employee, which are also placed in his personnel file. The third step is to classify the employee as unsatisfactory. The fourth step is probation and the fifth and final step is discharge.

In all discharges the supervisors involved present a recommendation to "the Staff," consisting of supervisors and including the plant manager, the assistant plant manager, a planning control superintendent, an engineering superintendent, and the personnel superintendent. The staff decides whether to discharge or not. I infer this staff so acted in the case of Watkins.

On Tuesday, May 15, when Watkins reported for the day shift, he was sent immediately to the shift office where Aslinger handed him his final checks. He told Watkins that the Company had decided to terminate his services.

Watkins appealed his discharge to the plant manager pursuant to which a meeting was arranged with Assistant Plant Manager Kenneth Steuber on May 24. Steuber informed him management had taken a timestudy survey which indicated that he did not have sufficient time to check his hotplate temperatures during the time he said he did. Although Watkins explained that he had only estimated the time at 20 to 30 minutes and that he had not claimed this was exact, Steuber stated he was standing behind the termination decision. Watkins then asked why, if it were such a priority matter, the paperwork on hotplates had not been filled out for 5 days prior to his coming on duty May 8. Steuber replied that the employee responsible actually had the information written on a card but had not transferred it to the hotplate temperature patrol sheets. He reaffirmed he was standing behind Watkins' termination.

Although the basis for management's position on the discharge was that there was not sufficient time for Watkins to do what he said he did, the General Counsel offered evidence as part of the case-in-chief that on Watkins' last night at work there were only eight machines which needed checking. Watkins estimated that, depending on conditions, he needed anywhere from 3 to 6 minutes to check all hotplates on a machine and that normally it took him 3 to 4 minutes. Guerry Porter, who replaced Watkins after his discharge, at first required a little over 5 minutes to do one machine but after some experience he performed the same work in 4 minutes or a little less. Based on this evidence I find that Watkins was able to check the hotplates on the eight machines in a minimum of 24 minutes and a maximum of 48 minutes.

e. *Respondent's motive in discharging Watkins*

(1) The *prima facie* case

Even though the temperature information which Watkins entered on the hotplate temperature reports was not inaccurate, a preponderance of the evidence shows that he did not actually check temperatures on May 11. I find he simply entered the temperatures previously recorded. This did not inure to his benefit, other than to give him more free time in the rap shack, nor did it affect plant production. Nevertheless, Aslinger correctly concluded that he did not perform this part of his job on May 11, although he said he did, and that the temperature reports were false in that they were not based on actual checks made by Watkins on May 11.

In ordinary circumstances such neglect of duty and misinformation is adequate ground for discharge. Here, however, because of the evidence of company union animus, the timing of the discharge in relation to its vigorous antiunion campaign, and its numerous unfair labor practices, and in particular the timing of the surveillance immediately after Watkins' concerted activities on behalf of Reed which suggests "a predetermined plan to discharge" Watkins, a *prima facie* case of discrimination is made out. *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980). Aslinger's program of surveillance, set up on Friday after he had unquestioningly accepted Watkins' temperature reports on Tuesday, and again Wednesday and Thursday, tends to show that Watkins' concerted activities on Wednesday, in which he complained to Senters about Aslinger, prompted the surveillance. Watkins' misconduct may well have gone undetected if the supervisors had not purposefully set out to learn if he really was making his temperature checks.

It can also be argued that the successive discharge of three union supporters, Watkins on May 15, Merriman on May 16, and Jones on June 18, warrants an inference of unlawful motive in the discharge of each. Because of the circumstances I do not draw such an inference. There is an absence here of evidence specifically connecting these three employees to one another. The total complement of plant employees is large, almost 3,000. In the Board election, 2,828 employees in the bargaining unit were eligible to vote. Of these 2,756 cast valid ballots, 1,196 for the Union. With these large numbers, and absent other evidence connecting them, the relation of one discriminatee's case to the others is not apparent from this record.

(2) The issue of disparate treatment

The General Counsel contends that Respondent has not been evenhanded in discharging Watkins because 5 months later, in dealing with employee Michael Ramsey for falsifying production records, it discharged him and then reinstated him. That incident, however, does not establish disparate treatment of Watkins. Ramsey was discharged for failing to make a predoff and post doff inspection on his draw-twist machine and then signing the record that it had been made along with other checks listed on the record card. When he appealed further investigation revealed that as many as 5 percent of that type of record were similarly incomplete yet no other employee had been disciplined for signing off on the cards. Ramsey was reinstated because management ultimately concluded that he had not intended to falsify the records.

Evidence in the present matter establishes that, during the calendar years 1974 through 1979, only 76 employees were discharged out of a total complement at times as large as 3,500 employees. Of these 76 discharges, 5 (in-

cluding Ramsey) were reinstated. Of the remaining 71 discharges, 6 (including Watkins) were for falsifying one or another type of record. Thus, on April 25, 1974, Vernon Hewlett was discharged for signing out of the plant under an assumed name; on March 27, 1975, James Johnson was discharged for falsifying his disability records; on January 13, 1976, Larry Grider was discharged for the same reason; on July 18, 1977, Ronald Norris was discharged for falsifying records, failing to change travelers, and recording that they were changed; on May 15, 1979, Watkins was discharged, according to Respondent's records, for "failure to perform all functions of job assignment, falsification of records, misrepresentation of facts"; and on August 17, 1979, Ronnie Dishroom was discharged because he "failed to satisfactorily perform his job and falsified denier records." The evidence does not reveal, except for the case of Ramsey, whether during this 5-year period discipline short of discharge was imposed for falsifying records. The evidence does establish beyond doubt that falsifying records was a dischargeable offense. The other discharges on this ground demonstrate that, even if Watkins' faults had been discovered in the absence of his protected activities, he nevertheless would have been discharged. In this respect the present matter differs from *Wright Line, Inc., supra*, where the Board found significant evidence of disparate treatment of the discharged employee. By contrast Respondent here has demonstrated that it would have taken the same action against Watkins even in the absence of his union and concerted activities. *Gerald M. Martin and Kathleen R. Martin, a Partnership Doing Business Under the Trade Name and Style of Liberty Pavilion Nursing Home*, 254 NLRB 1299 (1981); see also *Stewart Granite Enterprises*, 255 NLRB 768 (1981). Watkins' case also differs from *Wright Line* in other respects. Thus, in *Wright Line*, surveillance of the employee involved originated with higher management officials who had no reason to check up on the employee, a circumstance suggesting a predetermined plan to get rid of the employee. By contrast, surveillance of Watkins originated with the lowest level of management, his immediate supervisor who arguably had reason to check up on him because over several days he on no occasion had observed Watkins actually performing the temperature checks which he reported. In *Wright Line* the final paycheck was prepared prior to confronting the employee with the alleged discrepancy. Watkins, on the other hand, was given an opportunity to explain before the decision to discharge him was made. Another difference is that in *Wright Line* the work reported as performed was in fact performed, the only discrepancy being, as the employee explained, that it was not performed at the particular time shown on the report, a relatively minor discrepancy. With Watkins, however, the work, as shown by a preponderance of the evidence, in fact was not performed. In *Wright Line* the sole ground for discharge was falsifying the production record. By contrast, Watkins was discharged on three grounds, not performing the work, falsifying the production records, and then verbally giving false information when confronted by his supervisor.

In these circumstances, even if Watkins' protected activities prompted his supervisors to scrutinize his temperature checks and reports, the results of which scrutiny led to his discharge, the inference is not warranted that he would have been discharged if something less than a dischargeable offense had been uncovered. See *Pork King Company*, 252 NLRB 99 (1980). Considering the whole record, I do not find that Watkins' "protected activities are causally related to the employer action which is the basis of the complaint." See *Wright Line, Inc., supra*, fn. 14. Accordingly, I find that a preponderance of the evidence fails to establish that Respondent discharged Watkins for unlawful reasons in violation of Section 8(a)(3) and (1) of the Act.

2. James Merriman's discharge

On May 17, about 3 weeks following the Board election, James Merriman was discharged after having worked for Respondent almost 15 years. At the time of discharge he was a spinning machine operator in the T-33 spinning area.

a. *Merriman's union activities*

Merriman was one of the most active union proponents in the plant. It is beyond dispute that company officials knew of his union activities and interests. He was among the handful of employees who initially went to the union hall to request that the Union organize at the plant. In the campaign which followed, his prounion activities included attendance at between 20 and 30 union meetings, handbilling at the plant entrance on about 20 occasions, and the wearing of various union insignia in the plant including the dillies, union buttons, union T-shirts, a variety of union hats, a union jacket, and a special custom made denim jacket bearing an American flag and a union insignia. He also exhibited the union dillies and union bumper stickers as well as "Vote Teamster" sideboards on his pickup truck. He distributed union tags among fellow employees at the plant, handed out union cards to employees in the plant, and openly solicited them to join the Union. He was one of three campaign coordinators responsible for the organizational efforts among between 500 and 600 employees on his shift. During the campaign he organized an employee boycott of the information and discussion (I&D) meetings in his department which was 95 percent successful. In connection with the representation hearings scheduled in advance of the Board election, which was attended by company officials, he provided transportation for union witnesses, and he personally served a Board subpoena on a company official at the plant on the day scheduled for the hearing. As already noted, a few days prior to the election he and Sharp asked permission of his supervisor, James Wright, to enter the plant during their vacation time prior to the election for the declared purposes of campaigning among fellow employees during lunch periods.

b. *Merriman's assignment of May 16*

The spinning operation in which Merriman worked involves complex machinery to convert liquid polymer into nylon thread. The controls for these machines are on the third floor of the plant. Below on the second

floor packs of liquid polymer supply this material to the machines which transmit it in thin streams through vertical funnels to spinning machines on the first floor.

The spinning machines are arranged in lines, two machines to a line, each machine with 32 spinning positions. One-fourth of these, or eight positions, known as a quadrant, are assigned to each spinning operator. Line 4 on the first floor consisted of spinning machines 301 and 311. Merriman's assignment was to operate the fourth quadrant on the high side of spinning machine 311 which included spinning positions 25 through 32. Among spinning operators the fourth quadrant of spinning machine 311 had the reputation of being difficult to operate and of having frequent and numerous breaks in the fiber being spun.

c. *Transfer line changes*

From time to time after extended periods of use, the funnels or lines which transfer the polymer filament from the second floor to the first floor require cleaning. To accomplish this it is necessary to make a changeover in transfer lines on the second floor. For this changeover the spinning machines on the first floor are shut down for several hours. Such a transfer line change for line 4 spinning machines (machines 301 and 311) was scheduled for 8:30 a.m. on May 16. The spinning operators on those machines, including Merriman, were so informed by their supervisor shortly after 8 a.m. that day.

d. *Breaks in the fiber*

Breaks in the fibers going to the various spinning positions on a spinning machine are a frequent occurrence. Such breaks are of two types, quality breaks and string-in breaks during doffing, both of which interrupt the spinning at the position involved. When such breaks occur, it is the responsibility of the spinning operator to "string the positions back up" thereby reactivating the spinning process at those positions.

Merriman testified that between 8 and 8:30 a.m. on May 16, two positions in his quadrant ceased operating due to quality breaks, and that between 8:30 and 9 a.m. three string-in breaks occurred. When the first two breaks occurred and again when the three occurred, he contacted someone on the second floor (he did not say who) to inquire whether he should string the positions back up in view of the scheduled changeover and was informed that he should not. Shortly after 9 a.m. the three remaining positions quit spinning yarn so that his entire quadrant was not operating.

Wright corroborates Merriman to the extent that production records show he experienced five positional breaks that day, three of them quality breaks and two string-in breaks. The patroller, Herman Vincent, corroborates Merriman to the extent that between 8:30 and 8:40 a.m. three or four of Merriman's positions were down, that Merriman was pulling "wraps" off position 27 which was down and, while he was doing this, position 32 went down by itself. Fellow employee Gwin Millwood, who was working the third quadrant of machine 311 next to Merriman, also corroborates him to the extent that he observed him cleaning up his down positions and calling the second floor to ask what to do with them and also that about 10 minutes before 9, while Merriman was working at his position 32, position 26 went down by itself. Because of the scheduled transfer line change, none of the operators on line 4 who had positions down bothered to restring them. Other than Merriman, none were disciplined.

The transfer line change scheduled for 8:30 was delayed until after 9 a.m. Although some of the spinners were informed of the delay, Merriman was not. He testified, and I find, that around 9 o'clock only three of his positions were running. In normal operations each strand runs on a separate bobbin. However, cordage bobbins are utilized when the operator doffs the regular positions or in anticipation of a maintenance shutdown such as the transfer line change scheduled for that morning. In using cordage bobbins, more than one strand may be combined on a single bobbin and that is what Merriman had done with the strands from the three remaining running positions on May 16. He testified that shortly after 9 a.m. these three positions quit spinning yarn. At that point the transfer line change had not yet occurred, although Merriman was unaware of this.

e. *Waste on the second floor*

Meanwhile, on the second floor Supervisor Donald Britt, who is Wright's immediate superior, noticed waste material accumulating on the floor and concluded that the fourth quadrant of spinning machine 311 was not operating. He telephoned Supervisor Wright on the first floor to inquire what had happened. Wright went to Merriman's station and asked him what happened. Merriman replied that the second floor had shut it down. Wright reported this at or about 9:10 a.m. to Britt, who denied that was the case. Two or 3 minutes later the transfer line switch began. Wright and Britt considered whether the positions in the fourth quadrant should be strung back up, but decided, since the line change had already started and only about 20 minutes were involved before the changeover reached the fourth quadrant, that they should not string up the positions. They thus had an opportunity, which they rejected, of reducing or mitigating any loss of production in the fourth quadrant for which a short while later they accused Merriman of being responsible.

After talking with Britt, Wright returned to the first floor and asked Merriman again why his positions were broken back and Merriman again replied that the second floor broke them back. Wright told him they were investigating it and would get back with him later.

Wright checked the break records which showed five breaks between 8 and 9 a.m. Whether these were quality breaks or string-in breaks appears to me to be inmaterial.

f. *The accusation*

About 1 p.m. Wright took Merriman off his job and took him to the section office where Wright, Britt, and Bryant talked with him. They accused him of deliberately breaking his positions back, sabotaging the machine. Wright said it was a serious offense and that his job was in jeopardy. Merriman denied doing so, saying that he

knew better than to do something like that because he was a union supporter and they were being watched and had to be really careful. He said, "This is a railroad job" and asked for a thorough investigation. Wright replied he was not concerned about who did or did not support the Union, that all he was concerned about was the incident on Merriman's quadrant and the lost production. At approximately 1:30 Wright escorted Merriman to the plant gate. According to Wright he sent him home for deliberately breaking or sabotaging his machine, that is, his eight positions should have been running normal production since there had been a delay and the transfer line switch had not yet begun. From this testimony of Wright it is apparent that management held Merriman responsible not only for the last three down positions which had, according to him, gone down just before Wright first asked him what had happened, but also for the other five positions which had earlier experienced breaks as noted on the break record. Bryant had reported to his fellow supervisors that many of Merriman's positions were running cordage, the inference being that this procedure is not acceptable. However, the unrefuted evidence of several operators on other quadrants indicates that it is normal and acceptable to run cordage in anticipation of a scheduled transfer change shutdown. On May 16 other operators were running cordage also, and no supervisor directed Merriman not to, or to cease to, run cordage or to restring down positions.

After being sent home Merriman immediately contacted the Regional Office of the Board to request that forms be sent him so he could file unfair labor practice charges against the Company. The forms were sent and thereafter the Union on his behalf filed the charges herein.

g. *Separation procedures—the Weingarten question*

The next day, May 17, Wright telephoned Merriman at home and asked him to come to the plant. In this conversation Merriman for the first time asked that witnesses be present at any meeting with management. Wright, however, refused, saying their meeting would be private with no witnesses permitted. Obviously Merriman had reason at that point to anticipate that any meeting might involve discipline for him. That afternoon at Wright's request Merriman met with him at an office near the plant gate. He again asked that a witness be present, which request Wright again denied. Wright read a statement informing him that he was discharged for deliberately breaking back his quadrant to the second floor and running waste. Wright asked him if he had any further information to add and, according to Wright, Merriman repeated what he had previously said, that it appeared he broke some positions back but that in fact he did not. It is thus apparent that the investigation remained open and Wright was seeking whatever information Merriman could provide. Wright informed him he could appeal the discharge to the plant manager and that he would then be entitled to witnesses if he chose to appeal.

Following their conversation Wright escorted Merriman to the personnel office to talk with the industrial relations counsel. Merriman, however, told him he would rather not see the industrial relations counsel until he had an opportunity to get his own legal advice. In spite of this request, Wright escorted him to Personnel Supervisor Chick Thomas who asked him what happened, thereby continuing the investigation. In response Merriman described the events of May 16. He also informed Thomas he thought he was being discriminated against because of his union activities. Although Merriman during the campaign had handed union handbills to Thomas as he entered the plant, Thomas said this was the first he had heard of Merriman's union activities, a seemingly disingenuous remark for a personnel official. During their interview Thomas took notes on what Merriman said, recording in detail the information given about the events of May 16. Thomas discussed his rights respecting pension, life insurance, and the dental and medical plans. In answer to Thomas' question as to what led up to the discharge, Merriman described the shutdown which Thomas recorded in the following language:

> He said a shutdown to change packs had been scheduled and he had switched his positions (8) to plied yarn. Sometime between 8:00 and 9:00 a.m., two positions broke and when he asked second floor if they would throw down, they said, *no*. About 9:00 a.m. another position broke and when he asked second floor for throw down, they said, no. Five positions were still on plied yarn and when two of them broke they were not thrown down. Subsequently, the other three positions were taken down and not thrown down. When he asked a second floor operator what had happened to cause the yarn to run out, the reply was "I don't know." Bill Vinyard on second floor said someone might have thrown it in the basket.
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> * * * * *
>
> He said it appeared he had deliberately shut down the positions but he said he did not do it and he is innocent.

After leaving Thomas' office, Merriman met Wright at the plant gate and left.

It is undisputed that, on May 17 after Merriman was informed he was being discharged, he requested that a witness be present with him at any meeting with management concerning his employment situation. The request was denied and nevertheless Wright and Thomas both conducted investigatory meetings with him which resulted in his final termination, an event which Merriman could reasonably expect. Even though no union was in the picture representing Merriman at these interviews, under Section 7 of the Act he was entitled to the presence of an employee representative of his own choosing. *Anchortank, Inc.*, 239 NLRB 430 (1978), enfd. in pertinent part 618 F.2d 1153 (5th Cir. 1980); *Good Samaritan Nursing Home*, 250 NLRB 207 (1980); *Illinois Bell Telephone Company*, 251 NLRB 932 (1980). An important factor in the present situation is the effort of both Wright and Thomas to obtain additional facts from the mouth of Merriman. *Good Samaritan Nursing Home, supra; Baton*

Rouge Water Works Company, 246 NLRB 995 (1979). For the above reasons, I find that in denying Merriman a witness or representative Respondent violated Section 8(a)(1) of the Act. *N.L.R.B.* v. *J. Weingarten, Inc.*, 420 U.S. 251 (1975).

h. *Unemployment compensation proceedings*

On May 18, the day after his discharge, Merriman applied to the Tennessee Department of Employment Security for unemployment compensation. Respondent opposed his claim and on May 25 a hearing was held by the state agency which resulted in a decision allowing Merriman's claim on the ground that cause for his discharge had not been established. Respondent appealed and a second hearing was held on June 21 before an appeals referee. On June 25 the Appeals Tribunal of the Tennessee Department of Employment Security issued its decision denying Respondent's appeal and "in all matters" affirming the initial determination approving Merriman's claim. The Appeals Tribunal's decision includes findings of fact which, in pertinent part, are as follows:

> Employer contends claimant was responsible for the malfunctioning of equipment between 8 a.m. until 9 a.m. on May 16, 1979. He did not report the problems to his immediate supervisor. No other problems, circumstances or situations prior to the incident were made part of this record. Witness alleged there was a planned shutdown at 8:30 a.m. and parties at instant hearing did not receive instructions it had been delayed or aborted. Under the circumstances and situations that developed between 8 a.m. until 9 a.m. on May 16, 1979 indicated all working conditions, breakdowns, etc. were of a routine nature. Opinions of witnesses were the equipment malfunctions is very common and known to management, and is due for a general overhaul or repair process. It would be very expensive for the Company to shut down for the repairs. They have been needed for about 1 year. There are no records available to show claimant performed wrongdoing or acted in an irrational manner or functioned any differently on this day than he had on prior occasions under similar circumstances. Claimant denied all employer allegations and did not violate a policy or rule in performing his work functions on May 16, 1979.

Although the Board gives consideration to such decisions of state agencies, they are not binding on the Board. *Aerovox Corporation*, 104 NLRB 246 (1953), enfd. 211 F.2d 640 (D.C. Cir. 1954).

i. *Respondent's motive in discharging Merriman*

(1) The *prima facie* case

As with the Watkins' discharge, the motive in discharging Merriman is to be tested in accordance with the formula set out in *Wright Line, Inc., supra*. For the reasons noted below, I find that the evidence makes out a *prima facie* case of discriminatory motive in the discharge. First, there is no indication in the record of unsatisfactory performance in his long tenure as an employee. There is overwhelming evidence of his extensive union activities, company knowledge of which is beyond doubt. As in the case of Watkins, and for the reasons already stated herein in connection with that discharge, Respondent's numerous independent violations of Section 8(a)(1) during the preelection campaign warrant an inference of managerial animosity respecting employees actively engaging in union activities, which includes Merriman.

The circumstances surrounding the discharge, evaluated in the context of the above findings, lend further support to the finding of discriminatory motive. Thus, the testimony of Supervisor Wright shows that management found fault with Merriman because all eight positions in his quadrant were out of operation. Five of these positions were susceptible of being put back into operation pending the scheduled changeover by being strung up again, which Merriman had not done. Yet it is normal practice, pending a scheduled changeover, to not restring positions. Merriman had done so in the past without getting into trouble and on May 16 other spinning operators on the line scheduled for changeover were not restringing their down positions and they received no discipline. Further on this point, when the three supervisors first concerned themselves with Merriman's quadrant on May 16, they considered having him restring the down positions but opted not to because the imminent changeover for his quadrant was expected in 20 minutes. Thus, they apparently did what Merriman had done in not restringing. Had they directed Merriman to restring those positions, they would have mitigated his alleged responsibility for some of the lost production for which they criticized him.

The weight of the evidence shows that the breaks on the five positions referred to were normal for this type of operation and there was no basis for singling out Merriman and criticizing him about those. The last three positions ceased operating shortly before the changeover began. Breakdowns are a common occurrence in the spinning operation. Merriman testified credibily that his last three positions went down by themselves. He repeatedly denied shutting them down himself and attributed responsibility for the shutdown to the second floor, a logical inference in view of the scheduled changeover. It was his repeated assertion that the second floor had shut down that convinced his supervisors he was guilty of sabatoge. They took the position that if he was wrong about this (and he was wrong because unknown to him the changeover had not yet begun) he must have shut down the position himself. But that quick conclusion ignored the third possibility that the yarn could have stopped coming down from the second floor because of fault or obstruction in the equipment which delivered the yarn to the first floor. There is evidence in the record that the facilities were long overdue for overhaul. Other evidence indicates that the scheduled changeover was required by the normal accumulation of obstructive material in the transfer lines.

In these circumstances, I find that the General Counsel has made a *prima facie* showing sufficient to support the

inference, which I make, that Merriman's union activities were a motivating factor in the decision to send him home on May 16 and to discharge him on May 17. Under *Wright Line, Inc., supra*, this showing shifts to Respondent the burden of demonstrating that it would have suspended and discharged him even in the absence of his union activities.

(2) Evidence of cause for discharge of Merriman

(a) *The initial investigation*

When Britt first called Wright and Wright asked Merriman why his quadrant was down, Merriman said they broke them back on the second floor. Wright asked him if he had been notified that the second floor was beginning to pull the packs, and Merriman said no. Wright said he would go to the second floor to see if for any reason they had changed the order of removing the packs because they were supposed to begin on position 16 (the other side of the machine) and then come over to position 17 on Merriman's side, which would have made his positions the last to go down. Wright then went to the second floor and learned that they had not yet begun changing packs on the fourth quadrant of machine 311 and that they were just then starting to pull the packs at position 16 on the other side of the machine.

He returned to Merriman who reaffirmed what he had said before. Wright then checked the break records which showed five breaks recorded between 8 and 9 a.m., three quality breaks and two string-in breaks, which normally would be recorded by Merriman as quadrant operator, or by Vincent as the patroller.

Wright returned to Britt and the two of them continued their discussions. They were joined by Britt's superior, Jack Bryant, and, after further discussion, Britt notified the area supervisor, Harold Reed. After about an hour they decided there had been no equipment failure, that there was no reason for Merriman's quadrant to cease operating while others continued, that the yarn buildup in the interfloor tubes observed by Britt could only happen by the operation being "broken back" from the first floor, and that it was Merriman who had broken the positions back to avoid stringing up and doffing off again. Britt told Wright to send Merriman home pending completion of the investigation.

(b) *The further investigation*

After Merriman was sent home, according to Bryant, the supervisors continued their investigation by looking at process records, break records, and other unspecified information. The record evidence shows that all of the spinning machines were erratic in performance. Spinning machine 311 was no more so than the others. Company records indicate that the number of breaks experienced on the quadrant on which Merriman was working was comparable to that experienced on other machines.

In comparing notes prior to sending Merriman home Bryant, Britt, and Wright took note of the fact that on his quadrant Merriman was running a great deal of cordage and also that, although his quadrant went down, the others kept running normally. They determined there had been no equipment failure; that there had been no reason for Merriman's quadrant to go down and the others to continue to run. Britt had observed yarn building up in the interfloor tube which, according to him, could only happen when the positions are broken back from the first floor. They decided Merriman had committed sabotage because each time Wright spoke with him, he said that the second floor had broken the positions back, and, based on what Britt observed, that could not have happened. One additional factor considered was that if positions are broken back on the second floor no accumulation of yarn develops in the interfloor tube as occurred with some of Merriman's positions approximately 15 minutes before the line was shut down for the transfer switch. These were the considerations which Britt testified persuaded the supervisors that Merriman had intentionally shut down his quadrant. In searching for a reason why he would have done this, they apparently inferred that he was trying to avoid the additional work of restringing and doffing.

After sending Merriman home, Britt, Bryant, and Wright looked at process records and break records on the spinning machines as well as other information not specified by Britt. This did not alter their views. At about 3 in the afternoon Britt presented the matter to "the staff" in accordance with established personnel procedure, recommending that Merriman be discharged for deliberate, unauthorized shutdown of company equipment and sabotage. The staff accepted the recommendation and this became the dispositive determination in discharging Merriman, subject, of course, to the possibility of reversal in the event of an appeal to the plant manager. In Merriman's case no appeal was taken.

(c) *Concluding findings respecting motive in discharging Merriman*

Considering all the above evidence, I find that Respondent has failed to demonstrate that it would have suspended and then discharged Merriman even if he had not engaged in union activities. As already pointed out herein he was outstandingly active on behalf of the Union. And, as he pointed out when he was accused of deliberately shutting down his quadrant, it would be foolish for him as a union activist to have done so. He asked for a thorough investigation.

One circumstance which significantly influenced the supervisors who recommended his suspension and discharge was Merriman's own statement, which he reaffirmed, that the second floor had broken back his positions. It is clear from all the evidence that he referred to the last three positions that went down. This view of the supervisors assumes the question at issue; namely, Merriman's honesty in making that statement. This is so, because, if he really did not break back these positions (which he repeatedly denied doing) then the most logical explanation, in view of the planned transfer change, was the one he gave when Wright asked him what happened. Thus, his repetition of this explanation was and is no evidence whatsoever that he was guilty of sabotage.

Another circumstance considered important by these supervisors was that only the fourth quadrant of spinning machine 311 was entirely down while other quadrants

continued to operate "normally," and the supervisors concluded there was no reason for this other than sabotage by Merriman. But the evidence shows that Merriman's quadrant was not the only one with some down positions. Yet management held him at fault even though at least five of his breaks were of the usual type. In this respect management treated Merriman disparately from the way it treated other spinning operators on May 16 and from the way it historically had treated spinning operators. This disparate treatment extended to the lost production involved in the quadrant shutdown for which management held Merriman responsible. Operators other than Merriman were not restringing down positions because of the impending transfer change and received no discipline for this, it being the usual practice. And the supervisors themselves opted not to limit losses in Merriman's quadrant by having him restring down positions even though from their superior positions they expected 20 minutes to elapse before the transfer change affected the fourth quadrant.

The operators familiar with spinning machine 311 considered the fourth quadrant more troublesome and difficult to work with than other quadrants on 311 or on other machines. The view of management was that machine 311 and its fourth quadrant were no more erratic than other machines and positions, a view supported by some of the records of breaks. On the other hand, during the 3 months prior to May 16, company records show a wide variation between positions on the quadrants of 311, with the first quadrant running best, the second next best, and the third and fourth quadrants equally running the worst. During the 3 months after May 16 the first quadrant again ran best, the second quadrant again next best, the fourth quadrant third best, and the third quadrant the worst. The record indicates that all spinning machines were erratic so that even if machine 311 and its fourth quadrant were not typically more erratic than others that fact is not persuasive evidence that its fourth quadrant was not erratic enough to shut down on its own. Yet Respondent's management ruled out this possibility. Employee Campbell testified credibly, and I find, that about 2 years earlier the entire fourth quadrant of 311 had gone down on its own. Bryant said he could not remember this, but neither he nor any other supervisor specifically denied it.

Britt concluded that the accumulation of waste on the second floor could only result from a breakback on the first floor and that, therefore, Merriman had broken back his positions. This, at best, was a judgment call by Britt there being no persuasive evidence why the same accumulation would not occur if the machine shut down on its own. Britt, Bryant, and Wright inferred that Merriman had shut down to avoid stringing up and doffing off his positions. This also was faulty reasoning because, as already noted, other operators were doing the same thing, it was normal practice to do so, and the supervisors themselves opted against having Merriman restring his positions. Moreover, there is no evidence in the record that Merriman was a malingerer. On the contrary his long tenure indicates he was a satisfactory employee.

In sum, the rationale of the three supervisors, which became the basis for the staff decision to discharge Merriman, lacks persuasion and fails to demonstrate that the same conclusion would have been reached if he had not been a high profile union activist. The *prima facie* case of discriminatory motive in the discharge not having been refuted, I find that Respondent's discharge of Merriman was flawed by an unlawful motive. I further find that his discharge discouraged membership in the Union and, finally, that the discharge violated Section 8(a)(3) and (1) of the Act. *Wright Line, Inc., supra.*

3. Harassment and discharge of Gary Jones

Gary Jones was employed by Respondent a little over 8 years, from June 4, 1971, to June 18, 1979, when he was discharged. At the time of discharge he was a draw bulk operator in the T-13 cordura area. His duties chiefly consisted of stocking his machine and doffing it off. From March 6, 1979, until his discharge, his immediate supervisor was Bryan Lane.

a. *Jones' union and protected activities*

During the preelection campaign Jones was a highly visible union supporter, the most outspoken among the approximately 19 employees in his area. His activities included obtaining the signatures of approximately 30 fellow employees on union authorization cards, attending about 10 union meetings, passing out of union handbills at the main plant gate on about 10 occasions, and wearing various union insignia on his clothing and his doff bag. In this latter connection he wore a union T-shirt every day in the plant as well as a hat adorned with union stickers, buttons, and other insignia. Even after the Union lost the election, he wore his union T-shirt on two or three occasions, including June 17, the day he was suspended.

In mid-March Jones complained to Union Business Agent Jimmy Tipton about what he considered discrimination by Supervisor Bryan Lane against himself and fellow employee Johnny Horton on March 11 and 12. Thereafter on March 21 the Union on behalf of Jones and Horton filed unfair labor practice charges in Case 10-CA-14488 with the Board against Respondent. The charges, which were served on Respondent, allege that Lane, in violation of Section 8(a)(1) and (3) of the Act, threatened Jones and Horton with adverse action concerning their job status based on their wearing of union T-shirts and their support of the Union. Jones was subsequently called down to the union hall where he was interviewed by a Board agent and gave an affidavit in connection with the investigation of the charges. Lane similarly was interviewed and gave a statement. The parties stipulate that the charges were withdrawn on May 8.

b. *Company knowledge and animus*

As with Watkins and Merriman, Jones' overt, visible sponsorship of the Union in the plant during the preelection campaign is persuasive evidence that company officials had knowledge of his attitude and activities regarding the Union. In addition, as noted below, other evidence in the record further demonstrates such knowledge.

As was the case with Watkins and Merriman, Respondent's numerous independent violations of Section 8(a)(1) of the Act show the general animus of Respondent and its supervisors toward the Union and union proponents. Specifically respecting Jones' immediate supervisor, Lane, his unlawful interrogation of Billingsley on March 5 as well as his statement to the effect that wearing union insignia could cost Billingsley promotion to a supervisory position indicate his animus toward the Union and its proponents. Similarly, Lane's objection to Watkins' obtaining the signature of Byrd to a union authorization card in late February indicates his union bias. And animus toward Jones' prounion attitudes and activities is demonstrated by Wiley's remarks to him on the day before the election in which Wiley indicated the futility of employees' selecting the Union to represent them. In his remarks, Wiley commented on how the Company would fare in any bargaining with the Union, stating that DuPont was not going to let Gary Jones stand in its way.

Also, as set out hereinafter, Lane engaged in a program of surveillance of Jones which the General Counsel accurately characterizes as harassment. The timing of this surveillance and the sanctions that attended it, in relation to the Union's loss of the election and the suspension and discharge of Jones, further indicate Lane's and Respondent's animus toward his union activities.

c. *The harassment of Jones*

The General Counsel contends that Jones was harassed because of his union activities and because he brought about unfair labor practice charges against the Company.

Sometime in late February Lane was first assigned as supervisor for the cordura area with approximately 19 employees, including Jones, on his shift. In late February and early March, to orient himself to his assignment, he reviewed the personnel files of all employees under him. Respondent had been experiencing difficulties with customers because of defective products and managerial efforts were underway to reduce the number of defects. Lane endeavored to "run a tight ship" in his section. I find that he did so, at least in part, because of higher management's efforts to eliminate product defects.

But his efforts were not limited to the improvement of efficiency. Around the first of March, while the preelection campaign was in full swing, employee Michael Wilson complained to Shift Supervisor James Wiley that union supporters, which included most of the employees in Lane's section, were not permitted to leave their work area although an antiunion employee was allowed to roam at will. Wiley, admitting he had noticed the same thing, promised he would talk to Lane about it and get back to Wilson. Some 2 weeks later, about March 15, Wiley told Wilson he had spoken with Lane and what Wilson had complained of would not happen again. Thus, at the start of his tenure as supervisor in the cordura area Lane used his supervisory authority to restrict the activities of union supporters. He did this with the knowledge of his superior and continued to do so at least until after Wilson complained to Wiley. In a further effort to tighten up operations in his section, Lane, soon after he was assigned as supervisor, talked separately to each section employee about the duties of his job, safety, housekeeping responsibilities, productivity, use of the cafeteria, coming to work on time and not leaving early, and following standard plant procedures. He gave the same talk to all 19 employees. When he called Jones into a conference room on March 10 to talk with him, Jones asked if the Union was to be discussed, because if it was, he wanted a witness. Lane reassured him they were not going to discuss the Union and were only going to talk about his job and things pertaining to it. Their exchange is of significance in that it further demonstrates Lane's knowledge of Jones' commitment to the union cause.

Later that same day Jones complained to Union Business Agent Tipton about Lane in another connection; namely, that Lane had threatened him and fellow employee Johnny Horton in regard to their job status because they were wearing union T-shirts. The next day, March 11, Jones mentioned the anticipated charges to Lane and again emphasized his devotion to the union cause. As noted above, only the day before Lane had spoken with Jones about what was expected of employees in the section and, among other things, he had covered employee use of the cafeteria saying it was to be used at lunchtime only unless an employee had permission from Lane. But the next day Jones left his work area during working hours to go to the cafeteria for a Coca-Cola and potato chips. After he returned, Lane called him into the office and asked him why he had done so. Jones explained that the coke machine in their area had taken his money and he did not think in the circumstances Lane would mind his going to the cafeteria for a coke and potato chips. He admitted his error in doing so without permission. Jones also complained that he felt Lane was picking on him because he supported the Union. He told him he believed in the Union so strongly he would give his life for it. According to Lane, whom I credit in this respect, he told Jones that he believed in Jones' right to have a union and would not interfere with it. Also during the conversation, Jones told Lane, in reference to the unfair labor practice charges which he anticipated would be filed with the Board, that the next day Plant Manager Hawfield would be receiving a letter informing him that unfair labor practice charges were filed against Lane on which he would have to go to trial. He also said that, after the Union won the election, Jones was going to take Lane to Federal court in Atlanta.[10]

On April 9 Lane noticed that Jones, contrary to standard practice, was 19 positions ahead of his doffing schedule, which could result in undersized packages of product on the early doff and oversized packages on the next doff. There is no evidence that Lane took this problem up verbally with Jones. But on May 16 he issued him a written reprimand or intermediate contact which included, among other things, this failure to follow standard practice. Assuming, without finding, that Lane did speak to Jones about the problem, his saving of this tidbit for

[10] It is not clear from the record precisely what sort of a proceeding Jones had reference to.

memorialization in a written contact in mid-May exemplifies his careful building of a case against Jones.

On April 22, 3 days before the election, an incident occurred which further underlined Lane's knowledge of Jones' position as a union activist. Lane had him in the office for the purpose of informing him about a raise which employees were to receive. In the course of their conversation Lane attempted to turn the discussion to a union handbill. Jones refused to discuss the matter. The fact that Lane endeavored to engage him in a discussion of a union handbill tends to show his understanding of Jones as someone who knew about and could be responsive respecting union campaign policies and techniques. A day or two later Wiley and Jones engaged in a discussion as to who would win the Board election, Jones asserting that the Union would win and Wiley indicating that even if the Union won the bargaining process would have to follow. Jones then stated that the Company had not experienced bargaining until they bargained with the Teamsters. Wiley replied that DuPont would not let Gary Jones stand in its way. This incident demonstrates not only knowledge of Jones' union views but also indicates hostility toward him as a union adherent and was an oblique prediction of what ultimately happened to him.

Jones testified that after the Union lost the election Lane stepped up his harassment against Jones. I find Lane did so in the following respects: On a nightly basis he stood at the end of the machine aisle in which Jones worked and stared at Jones during his doff cycle; several times a week when, in accordance with established practice, Jones at his discretion took a break as his work was caught up, Lane got him out of the rap shack and required him to work at his machines even though he was busier than he previously had been and was taking fewer and apparently shorter breaks; on virtually every shift Lane took him out of his machine aisle and talked to him about one or another alleged failure; and on about 10 occasions between the end of the union campaign and Jones' discharge, at times when Jones was working with a "doffing buddy," Lane required him to remain at his machine to keep the operation running and to replace the bobbins as they ran out even though his fellow employee, or buddy, was allowed to operate in the normal manner by taking breaks at his own discretion. The above finding, based on Jones' testimony, is supported also by the general corroboration of fellow employees Michael Wilson and Larry West. Both testified that Lane followed up more closely on Jones than on other employees and that he stood at the end of the machine aisle staring at Jones during the doff cycle. West specifically corroborates Jones' testimony that he was kept working constantly while his "buddy" employee was allowed to operate normally. Lane testified that following the election he had no greater number of talks with Jones than before and that he paid no more attention to him than to other employees. In view of the above, however, I do not credit his testimony.

Soon after the election, I infer, on or about April 27, Lane changed the work rules for Jones in a manner requiring him to perform a greater amount of work than before and a greater amount than was required of his fellow employees. The normal practice had been to operate what is called the heel machine on a 97-minute cycle at the end of which the machine was doffed before commencing a new cycle. Following the election all employees in the section except Jones continued on the 97-minute cycle and, while waiting for the cycle to end, took breaks. By contrast, Lane put Jones on a continuous operation whereby he was required to stay with the machine and, as the bobbins ran out, to restock them, string them up and thereby keep the machine constantly running. The result was that an additional complete doff was accomplished each shift which involved more work. I base this finding on the credited testimony of Jones. Although Lane at first denied he imposed these extra duties on Jones, his subsequent testimony vacillated. I find his testimony less reliable than that of Jones.

About May 2, approximately a week after the Board election, Jones came to work to find that the operator on the prior shift had left five large "wraps" on a spinning machine known as the draw bulk machine. Wilson corroborates Jones that the wraps were the result of operations on the prior shift. Nevertheless, at the end of Jones' shift he was reprimanded by Lane for failing to properly patrol his machine thereby resulting in the buildup of the five large wraps. Although Jones explained to him that the wraps were not his but from the prior shift, Lane, nevertheless, incorporated his reprimand in the intermediate contact of May 16.

On May 13 Lane reprimanded Jones for two safety violations, the use of a pocket knife to remove wraps, and improperly using a hook knife. Lane subsequently incorporated these alleged violations in his intermediate contact of May 16.

The recommended practice for the removal of wraps is to use a burning gun. However, as Lane admits, burning guns were seldom available. Jones credibly testified, and I find, that most employees carry pocket knives and that it is common practice in the plant to use these knives in removing wraps. Considering both the common, allowed practice of using pocket knives and the general unavailability of the preferred burning guns, Jones was not guilty of objectionable conduct and Lane was plainly wrong in reprimanding him and writing him up in the intermediate contact.

As to the hook knife, Lane testified that the approved practice is to hold the knife with one hand while grasping the wrist of that hand with the other hand. He asserted Jones did not do this. Jones, on the other hand, testified he in fact did grasp the wrist of the knife hand with his free hand and did in fact follow the prescribed procedure. On this credibility conflict, I credit Jones over Lane chiefly because Lane was in error in his other safety violations as well as the matter of the five wraps which he included in the same intermediate contact and because of the other evidence tending to show that he was engaged in a planned program to harass Jones.

In the intermediate contact of May 16, in addition to memorializing the verbal reprimands of April 9 and May 2 and 13, Lane noted that "On numerous occasions in the past 6-8 weeks you have ineffectively utilized your working time by taking breaks when ends were down on

your assignment, by being off your assignment, and out of your work area without permission." He did not otherwise identify the occasions of these alleged deficiencies. But his generalization fits with the evidence already noted of a program to abnormally restrict Jones in the number of breaks and justify this on the ground that otherwise his assignments would be neglected. It is pertinent to note at this point that Jones was an experienced, fast, and knowledgeable employee and that none of the evidence, other than inferences to be drawn from Lane's generalizations, indicates that Jones was less efficient or less productive than his fellow employees. These generalizations include testimony from Lane that Jones spent too much time in the rap shack and that he had talked to him numerous times about this. He obviously did talk to him numerous times about it, but the weight of the evidence does not support the first part of his generalization. On the contrary it shows that Jones was spending less time in the rap shack than his fellow employees.

On June 2 Lane gave Jones a second intermediate contact based on two alleged incidents, one on May 29 and the other on May 30. According to Lane's writeup, at the close of the shift on May 29 Jones was observed outside his work area in front of his locker with his equipment put away at 8 minutes before the end of the shift at a time when his machine was down and with no attempt being made to get it producing. Lane wrote, "This is a direct failure on your part to follow previous instructions on 3/10/79."

Without more, Jones would appear from this to be clearly at fault. However, examination of the entire picture minimizes his fault. Company regulations allow employees to cease working 5 minutes before the end of the shift. Thus, Jones was 3 minutes early. There is no evidence to indicate that employees are required to stay beyond their assigned time for the purpose of reactivating machines which at that point are down. Jones testified without contradiction that other employees were doing the same thing as he yet only he was reprimanded. Thus, and, without condoning employees' early departure from their work stations, Lane both exaggerated Jones' fault and treated him differently than other employees, thus discriminating against him.

The incident on May 30 which Lane included in this intermediate contact involved an incident which occurred while Jones was in the rap shack. During his break a large wrap developed on one of his machines as a result of which the machine was shut down and another employee was asked to cut down the wrap. Here too, Jones appears to have been somewhat at fault. But this deficiency also must be put in perspective. It is not uncommon for such wraps to develop while an operator is on break in the rap shack. Plant practice is for employees on break to rely on fellow employees not on break and on supervisors to catch such developing problems. According to Jones, such problems occur as often as once or twice a week. There is no evidence that on the occasion in question Jones remained in the rap shack an excessively long time. Thus, the problem, and it obviously was a problem, is within the ambit of normal operations. And while Lane may not be criticized for endeavoring to limit problems and increase efficiency, this incident appears to be another example of his singling out Jones for reprimand.

In his intermediate contact Lane indicated that a copy would be placed in Jones' personnel folder and that continuing audits would be made to assist him in improving his job performance. He gave Jones an opportunity to read the writeup. He noted Jones' response as, "Very poor, says I am unreasonable, I am trying to railroad him out of here, says he is doing me a good job and he has no intentions of trying to improve since there is no way he can satisfy me."

d. *The employment performance review*

An employment performance review, or EPR, is a type of written job evaluation of the employee by his immediate supervisor. It is given annually to employees with the Company less than 5 years and biannually to those with the Company more than 5 years. The EPR is on a standard form whereby the supervisor may evaluate the employee as outstanding, good, satisfactory, or marginal in various categories. These categories include safety, housekeeping, quantity of work, quality of work, ability to get along with others, attendance, dependability, initiative and job interest, job knowledge and skill, and use of worktime. On June 16 Lane gave Jones his biannual EPR covering the prior 2 years even though he had only supervised him for the last 3 months.[11] He classified Jones as marginal in all categories except two, namely, ability to get along with others, in which he appraised him as satisfactory, and job knowledge and skill, in which he appraised him as good. His overall evaluation was marginal. Under "Remarks" he justified his evaluation on the ground that Jones violated safety rules, showed no interest in safety in that he did not attend safety meetings, that he had taken breaks while his machine was down, his failure to get broken positions restrung, his lack of interest in his job, his slowness to respond to instruction, and his overall attitude toward his job and the Company.

Lane noted on the EPR that Jones gave no reaction to the evaluation. In his testimony, on the other hand, he reported that Jones asserted Lane was trying to railroad him out of the plant, which assertion Lane denied, and that Jones said he was doing a good job for Lane and had no intentions of changing regardless of what Lane said. It seems obvious that Lane was confusing his interview on the occasion of the EPR with the interview on June 2 when he gave him his second intermediate contact. This is of no great significance other than to indicate Lane's confusion in testifying and to cast some doubt on the reliability of his testimony.

In preparing the EPR Lane reviewed Jones' personnel file which included the EPR from 2 years earlier which Lane testified was marginal. Jones, on the other hand, testified that his evaluation from 2 years before was good. Lane destroyed the earlier EPR when he prepared the current one. According to him this was normal practice. No other company witness was produced to cor-

[11] It is clear from Lane's testimony that the evaluation was for the preceding 2-year period and not just the period of Lane's tenure as Jones' supervisor.

roborate the nature of the earlier evaluation although it would seem that such witnesses, either supervisors or personnel officials, should be available. The General Counsel points out that, if Jones' prior evaluation were marginal, it seems doubtful Respondent would have continued him in its employ. Giving due consideration to these various factors, I find Jones' testimony to be the more persuasive and find further that his previous evaluation did not indicate that he was, overall, a marginal employee. Although in preparing his EPR on Jones, Lane looked at his personnel file, he did not consult with any of Jones' earlier supervisors. Jones' personnel file contained four intermediate contacts, the two issued by Lane already referred to, one dated about 6 months earlier, and one from over a year and a half earlier. Except for these the file contained no adverse information.

Part of Lane's rationale for rating Jones marginal in the category of safety was that he had not attended safety meetings in the 3 months he was under Lane. This is another example of Lane's overemphasis and overreaching. Admittedly, attendance at the safety meetings is not required. Most of the employees under Lane did not attend them.[12] There is no evidence of other employees being disciplined or even criticized for not attending them.

In the category of housekeeping Lane rated Jones marginal for the 2-year period based only on his general observation of him in the last 3 months. He used the same basis in rating him marginal in the categories of quantity of work and of quality of work. During Lane's tenure as his supervisor, Jones had no absences. In fact he had no absences for the 6 months period from January 1, 1979, to the time of the EPR and he had only six absences for the entire year of 1978, all of which were excused absences for medical disability. Yet Lane rated him marginal in the category of attendance. In the category of use of working time Lane evaluated him marginal, apparently based on his general criticism that Jones spent too much time on breaks and not enough at his machine. To some extent this was a subjective evaluation since traditionally no formal break schedule had been in effect, employees simply taking breaks at their discretion when they think the job is caught up and during breaks rely on fellow employees and supervisors to alert them to problems. Lane's subjective evaluation is suspect because of his demonstrated union animus and because of the other evidence indicating that he was making every effort he could as a supervisor to put Jones in jeopardy.

As noted above, Lane rated Jones as satisfactory in the category of ability to get along with others and rated him good in the category of job knowledge and skills. Nevertheless, in spite of these better appraisals and of the fact that Lane was his supervisor for only 3 months, and in spite of the shaky grounds for most of the marginal appraisals, Lane gave him an overall evaluation of marginal. He noted that because of Jones' overall attitude toward his job and the Company, his overall performance was unacceptable. In talking to Jones about the EPR he used the familiar euphemism that Jones had a "bad attitude" toward the Company and supervision.

[12] In his prehearing affidavit Lane states that from 3 to 8 employees in his section of 20 to 21 attended safety meetings.

e. *The confrontation of June 17*

The machines with which Jones worked are noisy. Employees who work in that area wear ear plugs to protect their ears. For both of these reasons verbal communication in the area is conducted in louder than normal tones in order to overcome these barriers.

Jones has a high-pitched voice. Moreover, it has been his habit for years to address others in the area in loud and high-pitched tones which are variously described in the record as hollering, yelling, and screaming. On occasion, he has simply erupted into a yell with no apparent intent to communicate specifically with anyone.

About May 15 Lane heard Jones emit a yell, or, as Lane described it, a scream. He directed Jones not to scream, apparently because Lane considered it a signal that the screaming employee was hurt. Jones said he would not do it any more. But, as might be expected, he eventually did. About a month later, on June 17, as Lane entered the cordura area, he heard Jones let out a holler. Jones' fellow employee Michael Wilson also heard him holler and looked up. On the other hand, Larry West who also was working in the area did not hear him. I find the holler was louder than normal for most employees but was not extremely loud. Lane testified, "He let out this real loud, high pitched scream . . . ." And again, "It was extremely loud, to the top of his voice and it was real keen, high pitched." In view of the testimony of Jones' fellow workers, I do not credit Lane's testimony to the extent that it indicates that the sound emitted by Jones was really loud or that it was a high decibel scream as that term is generally understood. Lane's testimony appears to be another instance of his stretching the facts.

At the time Jones was working at a machine called an air stripper. Upon hearing him holler, Lane walked up to within a foot or two of him. I base this finding on the testimony of both Wilson and West who corroborate each other and Jones. Lane testified that on entering the area and hearing the scream he motioned to Jones to come to him, that Jones turned off the air stripper and walked toward Lane some 15 to 20 feet. In view of the testimony of Wilson and West, who were more disinterested witnesses than Lane, I do not credit him insofar as his testimony indicates that Jones came toward him and that the two of them were away from the air stripper machine.

As noted above, the two were at the air stripper machine and very close together. Jones testified that Lane put his face in his and that they were so close that he bumped his stomach. As to their closeness, I credit the testimony of Wilson and West that they were as close as a foot or two from each other and do not credit Jones that they bumped stomachs. Lane said, "I thought I told you to quit hollering." I base this finding on the testimony of Jones and also because such a declaration is consistent with the direction against hollering which Lane had given to him a month earlier. Lane testified that he said, "Gary, I believe that we have discussed your

screaming on a previous occasion." But this seems a less likely wording in the circumstances and I do not credit Lane on this. At that point Jones admittedly "blew up." According to Wilson, who read his lips, he said he would scream any "goddamn" time or place he wanted. Lane corroborates this. At that point Jones pushed Lane back a step or two with the palm of his hand on Lane's chest and, according to Lane, whom I credit in this respect, said that Lane had lied about him and to him, had told every "goddamn" lie that could be thought of, and, if Lane were not an old man, Jones would stomp his "goddamn ass" in the floor. He asked Lane if he wanted to fight. Meanwhile Lane backed off a little, then he turned to leave the area with Jones right beside him continuing with his tirade. They proceeded this way a short distance to the edge of the machine aisles at which point Jones ceased his diatribe and returned to his work. Lane continued his exit and went to see Shift Supervisor Wilet. Shortly after he returned to his work, Jones told West that Lane was in his face, that he was talking to him in his face, and that he pushed Lane to get him out of his face. This, I find, accurately described the situation. As noted above, Lane did not touch Jones. But he did come close to him, so close as to commit in the mind of Jones a type of social aggression. This is not to suggest that in coming close to Jones, Lane was doing anything illegal but it does help explain why Jones, in his own words, "blew up." The language of former Chairman Fanning in his dissent, in *Jupiter 8, Inc.*, 242 NLRB 1093, 1094 (1979), aptly describes Jones' condition, "his nerves had been rubbed raw by the treatment he had received since the election, and that all of Morton's [in the present case Lane's] conduct had been pointed to this result." In *Jupiter 8, Inc.*, the employee involved had been subjected to a 3-week campaign, violative of Section 8(a)(1), by the company president who repeatedly told the employee he did not want him working for him because of his support of the union. Subsequently, the employee refused to follow the president's work directions and was fired for insubordination. Because of his insubordination, the Board majority found his discharge lawful.

f. *Jones' suspension and discharge*

Following his confrontation with Jones, Lane immediately reported to Wiley what had occurred. Wiley investigated by going to Jones at his work station and asking him for a statement. Jones declined with the words, "My word don't count." Wiley left but returned in 15 minutes to again ask him for a statement and again Jones declined but did say, "I've been pushed too far and I blew up." Wiley then sent Jones home with instructions not to return until he was called back.

Wiley did not extend his investigation any further. Even though West informed him that he had observed what happened, Wiley did not find out what he had observed or make any effort to find out whether any other fellow employee had had any information to offer.

The next day, June 18, Lane recommended to the staff that Jones be discharged for his verbal abuse and his physical attack on Lane. In the course of his presentation he reviewed Jones' job performance. It is clear, however, as he testified, that hitting, pushing, or shoving a supervisor is, without more, grounds for discharge. After deliberating, the staff adopted Lane's recommendation and ordered that Jones be discharged. Wiley then called him to the plant employment office where he talked to him in the presence of Joe Rowe. Wiley told him it was a difficult decision but that they had decided to discharge him because of the seriousness of the incident the day before. He also told him he was young and capable and Wiley felt he could find suitable employment elsewhere. Jones saw some sort of termination slip on the office desk which he picked up and read. It stated that he was discharged as "unreliable—attempting to do a supervisor bodily harm." Following the interview Wiley escorted him out of the plant.

The next day, Tuesday, June 19, Jones received in the mail what apparently is a separation notice for use in an unemployment compensation claim. It was on a form entitled "Separation Notice, Tennessee Department of Employment Security." It indicated that Jones had been discharged and under the space provided for detailed explanation carried the entry "Discharged—unsatisfactory job performance."

The General Counsel argues that because Lane admitted that Jones' job performance was included in his presentation to the staff and it played a part in his recommendation, that this constitutes a variance from his initial description of the basis for his recommendation, Jones' verbal threats and physical attack. I do not view this as a variance because in every discharge case job performance information is presented to the staff by the recommending supervisor and reviewed by them. The General Counsel also argues that Respondent has vacillated in the reasons given for the discharge because on the notice for the Tennessee Department of Employment Security only unsatisfactory job performance is noted as a reason and no reference is made to the verbal or the physical attack on the supervisor. I do not view this as a meaningful vacillation because the notice which Jones saw at the time of his termination did refer to the incident with Lane and because the notice on which the General Counsel relies was delivered to Jones subsequent to his discharge. Considering that the purpose of that notice obviously was for use before the Tennessee Department of Employment Security, it seems to me the reason for limiting the explanation on the form to unsatisfactory job performance very likely was to avoid creating a public record of verbal and physical attack on Lane.

g. *Respondent's motive in its conduct toward Jones*

The evidence reveals an ongoing and growing conflict between Lane and Jones commencing shortly after Lane took over the cordura section and culminating in their confrontation on June 17. In this the supervisor plainly had the upper hand as he built his case piece by piece. Lane's motive in doing this must be evaluated in the context of the whole situation.

Thus, the evidence demonstrates beyond doubt that Jones was quite active on behalf of the Union, that management knew of his prounion attitude, and that Lane

and Wiley in particular knew of his dedication. The other numerous unfair labor practices committed by Respondent show widespread managerial animus toward the Union and its supporters. And Lane's own animus in this regard is demonstrated in his violation of Section 8(a)(1) in late February when he unlawfully endeavored to restrict Watkins in obtaining Byrd's signature on a union authorization card and his March 5 conversation with Billingsley in which he unlawfully interrogated him about union activities and indirectly threatened him with the loss of a chance for promotion for displaying union insignia on his clothing. Even Wiley demonstrated his animosity toward Jones' union activities when on the day before the election he in effect told him that even if the Union won the employees would gain nothing, the inference being that it was futile for them to obtain union representation and bargaining.

But evidence of unlawful motive is not limited to this general showing of animus. In building his case against Jones, Lane treated him differently than he did other employees. Thus, in the matter of the 97-minute cycle on which he kept all other employees in the section, he treated Jones disparately by putting him on a continuous cycle which resulted in his performing more work than the others. Also, the evidence showing that he more frequently took Jones out of the rap shack than he did others tends to show disparate treatment. The very documentation against Jones which Lane carefully built, in part by his close surveillance of and attention to him, carried adverse consequences for Jones in the form of the intermediate contacts which were written up and the marginal EPR evaluation, all of which went into his personnel record. This disparate treatment was in part based on and justified by Lane's overreaching judgments in which he overweighted and exaggerated minor faults. Considering Lane's supervision in this context, I find that the evidence establishes *prima facie* violations by him, and therefore by Respondent, of Section 8(a)(1), (3), and (4) of the Act.

To find the above, however, is not to say that Lane could not exercise his supervisory authority in regard to Jones. In many of the incidents in which I find discrimination, he had some basis for exercising his supervisory authority and, had he not overplayed his hand or if he had been evenhanded in his dealing, no discrimination would have occurred. But even allowing that Jones had his faults as an employee, the evidence does not show that Lane would have taken the same actions respecting this skillful, experienced, employee of 8 years if he had not been the personification of prounionism in his section or had not instigated and given supporting evidence for unfair labor practice charges against the Company in Case 10-CA-14488 which involved Lane. Therefore, and especially in the light of Lane's disparate treatment of Jones and his stretching of the incidents involving him, I find that he unlawfully harassed Jones from shortly after Lane became supervisor in the section until their confrontation on June 17 and that in doing so he and Respondent discriminated against him because he engaged in union activities, thereby discouraging membership in the Union. This conduct violated Section 8(a)(1) and (3) of the Act. *Jupiter 8, Inc., supra; Wright Line, Inc., supra.* Similarly, because Lane also harassed Jones because he caused charges to be filed with the Board and gave an affidavit to support them, he and Respondent violated Section 8(a)(1) and (4) of the Act. *N.L.R.B.* v. *Robert Scrivener, d/b/a AA Electric Company*, 405 U.S. 117 (1972).

I find, on the other hand, that the suspension of Jones on June 17 and his discharge on June 18 were not unfair labor practices. Even in the light of the unfair labor practices up to that point, there is no persuasive evidence that Jones was suspended or discharged because of protected conduct. Nor is there any evidence of a preexisting intention on Respondent's part to discharge Jones at the time it did. Rather, the weight of the evidence shows beyond question that it was the confrontation between Jones and Lane which provided clear grounds for the action management took. Jones' propensity for hollering was, in my opinion, a minor matter. Even so, a supervisor may legitimately limit such outbursts on any number of grounds including the one which Lane gave, that it could be understood as a cry from someone who was hurt. In approaching Jones on June 17 to remonstrate with him about the hollering, Lane did not assault him. Even though Jones may have felt affronted by his proximity, he could easily have backed away. Jones was not cornered. There was no need to protect himself from Lane. Thus, although Jones' frustration with Lane, considering what had gone on before, is understandable, it provides no justification for his assault in pushing Lane or his insubordinate and ill-tempered tirade which accompanied and followed the pushing. There is no doubt that this conduct was the sole ground for suspending and discharging him. The General Counsel's contention that Jones' performance record as amassed by Lane played a part in that decision lacks merit. Jones' conduct on June 17 provided a total reason for discharge. His record came into consideration only in the sense that in every discharge case the reporting supervisor considers and presents to the staff the employee's record. That, however, does not establish that the performance record played a significant part in the recommendation or in the decision to discharge. In this connection it is noted that Wiley suspended Jones on June 17 without considering his record and wholly on the basis of the incident on that day. And, considering the absence of any prior intent to discharge on that occasion, the strong reasons for discharge present in the confrontation on June 17, and the promptness of the discharge thereafter, the conclusion is inescapable that that was the sole reason for discharge. *Jupiter 8, Inc., supra.* As with employee Cope in *Great Western Coca Cola Bottling Company, d/b/a Houston Coca Cola Bottling Company*, 256 NLRB 520 (1981), Jones' pushing of a supervisor is a serious offense even if his frustration because of past unfair labor practices is understandable. At the time Jones was not even arguably engaged in protected conduct (see *Atlantic Steel Company*, 245 NLRB 814 (1979)), or even unprotected collective action. See *N.L.R.B.* v. *Thayer Company and H. N. Thayer Company*, 213 F.2d 748, 753 (1st Cir. 1954). In these circumstances I find that Jones' suspension and dis-

charge are not unfair labor practices as contemplated by Section 8(a)(1), (3), and (4) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The unfair labor practices of Respondent set forth in section III, above, occurring in connection with the operations described in section I, above, have a close and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

1. Respondent is an employer within the meaning of Section 2(2) and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act by the following conduct:

a. Orally promulgating, maintaining, and enforcing an overly broad no-solicitation rule.

b. Refusing off-duty employees access to the plant cafeteria contrary to past practice and in order to interfere with employee union activities.

c. Interrogating employees about their union views and activities.

d. Soliciting an employee to remove union insignia from his clothing without a valid business justification for the request.

e. Promising benefits to employees if they would vote against the Union in a Board election.

f. Threatening employees by implying that it will be futile for them to select a union to represent them.

g. Threatening employees with reprisals for engaging in union activities.

h. Threatening employees with loss of future promotions because they engaged in union activities.

i. Threatening the future loss of jobs if employees selected the Union to represent them.

j. Denying employee James Merriman his right to have a representative of his choosing present at investigative interviews related to his discharge.

4. Respondent engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act by suspending James Merriman on May 16, and discharging him on May 17, 1979, and thereafter failing to reinstate him.

5. Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1), (3), and (4) of the Act by its program of harassment of Gary Jones from early March to June 17, 1979.

6. The unfair labor practices found above affect commerce within the meaning of Section 2(6) and (7) of the Act.

7. Respondent did not commit unfair labor practices by:

a. Discharging Ronald Watkins on May 15, 1979, and thereafter failing to reinstate him.

b. Suspending Gary Jones on June 17 and discharging him on June 18, 1979, and thereafter failing to reinstate him.

THE REMEDY

Having found that Respondent engaged in unfair labor practices, I recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. I recommend what is commonly referred to as a broad order because Respondent is shown to have a proclivity for violating the Act and has engaged in widespread misconduct demonstrating a general disregard of employee statutory rights. *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979). I recommend that Respondent be ordered to offer James Merriman immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other benefits and privileges, and that he be made whole for any loss of earnings incurred as a result of being suspended on May 16, 1979, and discharged on May 17, 1979, with backpay to be computed as prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and with interest as set forth in *Isis Plumbing & Heating Company*, 138 NLRB 716 (1962), and *Florida Steel Corporation*, 231 NLRB 651 (1977). I further recommend that Respondent be required to preserve and make available to Board agents, upon request, all pertinent records and data necessary in analyzing and determining whatever backpay may be due. I also recommend that Respondent be required to post appropriate notices at its Chattanooga plant.

Upon the foregoing findings of fact, conclusions of law, and the entire record in this case, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[13]

The Respondent, E. I. DuPont de Nemours, Chattanooga, Tennessee, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Promulgating, maintaining, or enforcing rules which interfere with employee union solicitation activities in nonwork areas of the plant or during nonworking time.

(b) Refusing off-duty employees access to the plant cafeteria, contrary to past practice, in order to interfere with employee union activities.

(c) Coercively interrogating employees about their union views and activities.

(d) Interfering with free exercise of employee rights by soliciting employees not to wear union insignia on, or to remove union insignia from, their clothing without valid business justification for such request.

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[13] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(e) Promising benefits to employees to induce them to vote against a union in a Board election.

(f) Threatening employees directly or by implication that it will be futile for them to select a union to represent them.

(g) Threatening reprisals to employees for engaging in union activities.

(h) Threatening employees that they will not be promoted because they engage, or if they engage, in union activities.

(i) Threatening the future loss of jobs if employees select a union to represent them.

(j) Refusing to allow employees the assistance of a representative of their own choosing at investigative interviews related to their discipline or discharge.

(k) Harassing, disciplining, suspending, discharging, or otherwise discriminating against employees because they engage in union activities or because they cause charges to be filed with the Board or give testimony under the Act.

(l) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist a labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act, or to refrain from any or all such activities.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Offer to James Merriman immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any loss of earnings or benefits he may have suffered by reason of Respondent's discrimination against him as set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all records necessary to analyze the amount of backpay due under the terms hereof.

(c) Post at its Chattanooga, Tennessee, plant copies of the attached notice marked "Appendix."[14] Copies of said notice, on forms provided by the Regional Director for Region 10, after being duly signed by Respondent's authorized representative, shall be posted by Respodent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

IT IS FURTHER ORDERED that insofar as the complaint alleges unfair labor practices not specifically found in this Decision, such allegations are hereby dismissed.

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[14] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."